

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3 BEFORE THE HONORABLE LARRY R. HICKS, DISTRICT JUDGE

4 MELINDA ELLIS, :  
5 Plaintiff, :  
6 vs. : No. 3:09-cv-428-LRH-WGC  
7 ALESSI TRUSTEE CORPORATION, et :  
8 al., :  
9 Defendants. :  
10

---

11 TRANSCRIPT OF JURY TRIAL - DAY 1  
12 (Pages 1 through 162)

13  
14 January 20, 2015

15  
16 Reno, Nevada

17  
18  
19  
20  
21 Court Reporter: Donna Davidson, RDR, CRR, CCR 318  
22 Certified Realtime Reporter  
23 400 South Virginia Street  
24 Reno, Nevada 89501  
25 (775) 329-0132

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S

FOR THE PLAINTIFF:

MARK J. BOURASSA  
TRENT L. RICHARDS  
The Bourassa Law Group LLC  
8668 Spring Mountain Road  
Suite 101  
Las Vegas, Nevada 89117-4113  
(702) 851-2180  
mbourassa@bourassalawgroup.com  
trichards@bourassalawgroup.com

FOR THE DEFENDANTS:

THOMAS JAMES BAYARD  
Alessi & Bayard  
556 North Diamond Bar Boulevard  
Suite 300  
Diamond Bar, California 91765  
909-861-8300  
tjb@alessibayard.com

STEVEN T. LOIZZI, JR.  
Alessi & Koenig, LLC  
9500 West Flamingo  
Suite 205  
Las Vegas, Nevada 89147  
Phone: (702) 222-4033  
steve@alessikoenig.com

1 RENO, NEVADA, JANUARY 20, 2015, 9:14 A.M.

2 --oOo--

3 P R O C E E D I N G S

4

5 THE COURT: Good morning. Have a seat, please.

6 COURTROOM ADMINISTRATOR: Today is the date and  
7 time for jury trial in civil case 3:09-cv-428-LRH-WGC,  
8 Melinda Ellis versus Alessi Trustee Corporation, and  
9 others.

10 Counsel, can you please state your appearances  
11 for the record.

12 MR. BOURASSA: Good morning, Your Honor. Mark  
13 Bourassa for Melinda Ellis, also known as Melinda James.

14 Trent Richards from my office, an attorney  
15 admitted in Nevada who will be assisting today.

16 And the gentleman next to him is Mr. Hunter,  
17 who -- excuse me, Mr. Blackburn, who is our technician.

18 THE COURT: All right. Thank you. And for the  
19 defense?

20 MR. BAYARD: Good morning, Your Honor. Thomas  
21 Bayard and Steven Loizza.

22 MR. LOIZZI: Good morning, Your Honor.

23 THE COURT: All right.

24 MR. BAYARD: On behalf of the defendant.

25 THE COURT: Counsel, the obvious question is

1 where have you been? Why are you so late this morning?  
2 And I'm putting you on notice that you're at risk of  
3 contempt of court. I want to know why you're here so late.

4 MR. BAYARD: Your Honor, we had a little bit of  
5 trouble locating parking.

6 I had some bad information in terms of how long  
7 it would take to get here.

8 And then we got -- I have a pacemaker, which  
9 caused some additional problems of getting through  
10 security. They also had some trouble with our box of  
11 documents. There was a bunch of minor little delays that  
12 involved us -- resulted in us being a few minutes late.

13 THE COURT: All right. When did you arrive in  
14 Reno?

15 MR. BAYARD: Yesterday at about 3:15, I believe.

16 THE COURT: All right. Well, I'll accept your  
17 explanation. But I'm disappointed. We have 26 jurors  
18 waiting. We have counsel on the other side. We have court  
19 staff ready.

20 When I say 8:30, it means 8:30.

21 MR. BAYARD: Your Honor, I was -- and the error  
22 is entirely on my office. I was instructed to be here at  
23 9:00. And so we got here at about 9:02.

24 And so I apologize to the Court, to the staff,  
25 to Mr. Bourassa, and to everyone else. That was bad

1 information on our side.

2 THE COURT: Emphasize again that every pretrial  
3 order and every trial order that's gone out on this case  
4 has listed our start time at 8:30 in the morning.

5 MR. BAYARD: My apologies, Your Honor.

6 THE COURT: All right. Have a seat.

7 Are there any issues that counsel would like the  
8 Court to address before we bring in our jury panel?

9 MR. BOURASSA: No, Your Honor.

10 MR. BAYARD: None, Your Honor.

11 THE COURT: All right. Okay. At this time,  
12 we'll bring in the jury panel.

13 Madam Clerk, would you let me know when  
14 everyone's here and we're ready to go.

15 COURTROOM ADMINISTRATOR: Yes, Your Honor.

16 Please rise.

17 (Recess from 9:18 a.m. until 9:24 a.m.)

18 COURTROOM ADMINISTRATOR: Today is the date and  
19 time for a jury trial in case number 3:09-cv-428-LRH-WGC,  
20 Melinda Ellis versus Alessi Trustee Corporation, and  
21 others.

22 Counsel, can you please state your appearances  
23 for the record.

24 MR. BOURASSA: Good morning, Your Honor. Mark  
25 Bourassa present with Melinda Ellis as well as Trent

1 Richards, an attorney from my office. And Mr. Blackburn at  
2 the end is our technician. He'll be providing the visuals.

3 THE COURT: All right.

4 And for the defense.

5 MR. BAYARD: Good morning, Your Honor. Thomas  
6 Bayard and Steven Loizza on behalf of the defendants.

7 THE COURT: All right. And would you introduce  
8 the name of your clients, the defendants, please.

9 MR. BAYARD: Yes, Your Honor. The defendants  
10 are the Alessi Trustee Corporation; Alessi & Koenig, a  
11 Limited Liability Company; and in the caption David Anthony  
12 Alessi, although he is now a dismissed defendant.

13 THE COURT: All right. Thank you.

14 Ladies and gentlemen, I'd like to welcome you  
15 here this morning. We're in Courtroom No. 3 here of the  
16 federal courthouse here in Reno.

17 And the first thing I would tell you is, of  
18 course, my name is Judge Larry Hicks. And I'll be  
19 presiding over the trial that will be occurring here and  
20 commencing this morning.

21 But I would tell you that this is a civil case.  
22 It's a civil jury trial. And it's estimated to last no  
23 more than two to three days. So it will definitely  
24 conclude this week.

25 And just to give you an idea of what our

1 schedule is, we start promptly in the morning. Of course,  
2 we'll start just as soon as we're ready to go here this  
3 morning, and we'll go through the day. There'll be breaks  
4 in midmorning, midafternoon. There will be a lunch break  
5 from 12:00 to 1:30. And we'll complete the day as close to  
6 5:00 as we can do so.

7 And tomorrow morning we'll start promptly at  
8 8:30, and we'll go through until 5:00 with a similar type  
9 of schedule each day until we complete the trial.

10 That gives you an idea of the time requirement  
11 that may be necessary on your parts, those of you who may  
12 be chosen to serve on the jury.

13 But before we start with the jury selection, I  
14 like to take a few minutes to explain some of the reasons  
15 why you are here and why it's so important to have you here  
16 and why we couldn't do what we do without having you here.

17 This all goes back to over 225 years ago to an  
18 event no less important than the founding of our republic.

19 As you may recall from your history lessons in  
20 school and perhaps in college, our forefathers, who lived  
21 on this side of the Atlantic Ocean in the 1770s, were  
22 citizens of Great Britain. They had come to populate the  
23 king's 13 colonies on the eastern seaboard.

24 And by 1776 these colonists had become very  
25 frustrated with the rule of the king of England and also

1 the laws that were being imposed on them by the parliament  
2 of England.

3 You'll remember slogans such as taxation without  
4 representation in conjunction with their frustration.

5 As a result of all of that, the Declaration of  
6 Independence was signed on July the 4th, 1776, and that's  
7 become recognized as the birth date of our country.

8 But the Declaration of Independence was involved  
9 by eight years of war. The War for Independence was fought  
10 and won. But afterwards our ancestors, now citizens of 13  
11 states rather than 13 colonies, were isolated from the rest  
12 of the world, and they were isolated from each other as  
13 well.

14 If you imagine what it was like back then with  
15 no television, no radio, no effective source of  
16 communication and citizens from these 13 states having very  
17 little to bind them together to give them any strength or  
18 any semblance of a nation of any kind, something that  
19 had -- something had to be done that would be dramatic  
20 before one of the nations in Europe may have come to  
21 America and dominated these colonies and broken them down.

22 It was in this atmosphere that the founders of  
23 our country met in 1787. And we've come to know such names  
24 as Washington, Jefferson, Adams, Madison, Hamilton.  
25 Benjamin Franklin was even one of the persons involved in



1 the framing of our Constitution.

2 They did that over the summer of 1776. It took  
3 them nearly three months. They met in Pennsylvania and  
4 Philadelphia, and they drafted and redrafted forms of our  
5 proposed Constitution.

6 And if you've ever read and reviewed our  
7 Constitution, you will see that nowhere in the Constitution  
8 is there a word about what would be the rights of the  
9 citizens under this new united government.

10 There was nothing about freedom of speech,  
11 nothing about freedom of religion, nothing about protection  
12 from unreasonable searches and seizures, nothing about the  
13 right to due process of law, and nothing about the right to  
14 a trial by jury.

15 It was a mark of the leaders of our country who  
16 drafted this Constitution that they were able to persuade  
17 the citizens that if they would ratify our Constitution  
18 with no rights of the citizens spelled out, the first work  
19 of the new Congress would be to list the rights of citizens  
20 and submit them to the citizens for approval.

21 The ratification of our Constitution required 11  
22 of the 13 states, and with the promise of this first work  
23 by the new Congress, each one of the 13 states unanimously  
24 approved our Constitution.

25 And as promised, our first Congress met and

1 drafted what we commonly call our Bill of Rights, which  
2 became the First Amendment -- 10 amendments to our  
3 Constitution.

4 Included within those 10 amendments are our  
5 rights to freedom of religion, freedom of speech, due  
6 process of law, and the very reason why you have been  
7 summoned here today, the right to a trial by jury.

8 In civil cases the Seventh Amendment in the Bill  
9 of Rights now the Seventh Amendment of our Constitution,  
10 provides that if private citizens have a dispute, that they  
11 will have the right to come in to court and have their  
12 dispute heard and resolved by a jury of their fellow  
13 citizens.

14 The democratic form of government created by our  
15 Constitution has been a resounding success. Our  
16 Constitution today stands as a model of its kind over 225  
17 years after its creation.

18 Countries which have gained independence over  
19 the past two centuries have realized that they had to form  
20 some document of self-government. And the first place they  
21 have looked to is our Constitution because it is the best  
22 Constitution ever crafted by the hand of man. And it has  
23 worked better and lasted longer than any other form of  
24 government since.

25 In 1900 there were only 10 countries in the

1 world with democratic forms of government. Today there are  
2 roughly 120, all of them having followed, in some fashion,  
3 our constitutional form of government.

4 And that is why you are here today, because you  
5 are citizens of northern Nevada and will ultimately compose  
6 a fair and impartial jury to decide this case.

7 Although there are 26 of you here -- who are  
8 here this morning, there are only seven of you who will be  
9 chosen as jurors in this case. A civil case calls for a  
10 minimum, under our Constitution, of six jurors. And we  
11 customarily will have seven jurors when we have a short  
12 trial such as this one.

13 And it will be necessary that we ask you some  
14 questions in the interest of ensuring that each juror will  
15 be completely fair and impartial.

16 We're not going to pry into any personalities or  
17 rattle any skeletons in anyone's closet. Most of what we  
18 need is your name, where you work, what kind of work you  
19 do, how you feel about this kind of case, and whether you  
20 may have had any life experiences which may be related in  
21 any way to the issues which may concern this case.

22 We need this information in order to come to a  
23 mutual decision that, yes, it would be fair to ask you to  
24 sit on the case and it would be fair to the parties and to  
25 yourselves to make a commitment to serve on this jury and

1 decide this case as fairly as you can.

2 We will try not to waste your time or insult  
3 your intelligence. Whatever time it takes, hopefully you  
4 will feel it is not time wasted but time invested in  
5 participating and preserving a constitutional process that  
6 is one of the cornerstones of our nation.

7 I'll now ask that the entire group of you please  
8 stand and raise your right hands and be sworn for purposes  
9 of our questioning this morning.

10 COURTROOM ADMINISTRATOR: Do you, and each of  
11 you, solemnly swear that you will well and truly answer all  
12 questions put to you touching on your qualifications to  
13 serve as a trial juror, in the case now pending before this  
14 Court, so help you God?

15 (Prospective jurors responded affirmatively.)

16 COURTROOM ADMINISTRATOR: Thank you. Please be  
17 seated.

18 THE COURT: Okay. Now, ladies and gentlemen, we  
19 will call up into the jury box and into the first row of  
20 the courtroom -- what is our number this morning? Okay --  
21 13 of you. And you will all be able to be seated in the  
22 jury box. And I'll be directing my questions to the 13 of  
23 you.

24 But it will be important that everyone in the  
25 courtroom listen closely because if we excuse any of the 13

1 people, then someone will be selected randomly to fill that  
2 spot.

3 I would also tell you that your names have been  
4 drawn randomly by computer. In the old days we used to  
5 have a jury wheel here in the courtroom, and we would pull  
6 the names out one by one. But it took everyone more time.  
7 And today we have names drawn randomly by our courthouse  
8 computer.

9 And so those of you who have been selected will  
10 be called by name as a result of that computerized process.

11 And I'll ask that the first one of you be seated  
12 in the upper row on my end and that we'll fill that entire  
13 row, and then we'll start on the lower row again from my  
14 end.

15 Madam Clerk, would you please call the names of  
16 our prospective jurors.

17 (Jury empaneled and sworn.)

18 THE COURT: All right. At this time, I want to  
19 excuse those of you who have not been called or who were  
20 excused from the jury panel. But I want to thank each one  
21 of you for being here this morning.

22 I have to tell you, we hear from time to time  
23 about people trying to avoid jury duty or not wanting to  
24 serve on juries. But I don't see that here in northern  
25 Nevada. I mean, we send out our list of jury notices and

1 people show up. And they're here and they're ready to go  
2 and they're here on time.

3 Not only that, I see very responsive answers to  
4 every question which we ask. And this is a strong civics  
5 oriented community that really recognizes the importance of  
6 their duty as jurors. And I want to thank each one of you  
7 for being here this morning and certainly the jurors who  
8 will be sitting on this case for being here as our jury.

9 Those of you who have not been selected, you're  
10 excused now, and you may leave. And I thank you very much.

11 Of course, all our jury trials are public and in  
12 public courtrooms. Anyone who wishes to stay is certainly  
13 welcome to at any time they would like. But I recognize  
14 that you do have other things in your lives and you're  
15 probably going to be leaving. So I bid you adieu with a  
16 thank you very much for your service this morning.

17 All right. Ladies and gentlemen, what I have  
18 now are some brief instructions to you that will give you a  
19 sense of how the law applies to what you'll be doing as  
20 jurors, what your role is and what my role is.

21 And what I think I'll do, I'll go through these,  
22 and then we'll excuse you over the lunch hour. And then  
23 we'll reconvene -- we might even have you back here at 1:00  
24 for an early start with the actual trial.

25 But now that you've been sworn as the jury to

1 try this case, I'll briefly tell you something about your  
2 duties as jurors and give you some preliminary instructions  
3 regarding your conduct in this case.

4 At the end of the trial, I will give you more  
5 detailed written instructions which will govern your  
6 deliberations and will set forth the law that applies to  
7 this case.

8 As jurors, it will be your duty to decide from  
9 the evidence what the facts are. You, and you alone, are  
10 the judges of the facts. The evidence presented to you  
11 during the trial will primarily consist of the testimony of  
12 witnesses and tangible items including papers or documents  
13 called exhibits, as well as any facts on which the lawyers  
14 agree or which I may instruct you to accept.

15 After hearing all the evidence, you will apply  
16 the facts as you find them to the law to which I will give  
17 to you in my written instructions at the end of the trial.  
18 In this way you can reach a fair verdict which will be  
19 based on the evidence in the case and a verdict which is  
20 consistent with the instructions of law which you are  
21 obligated to follow. You've just taken an oath to follow  
22 the law.

23 You should not take anything I say or do during  
24 the trial as indicating what I think of the evidence or  
25 what your verdict should be. That is a matter which is

1 entirely for you, as jurors, to decide.

2           The evidence which will be presented to you  
3 during the trial may be either direct or circumstantial.  
4 Direct evidence is direct proof of a fact, such as  
5 testimony by a witness about what that witness personally  
6 saw or heard or did.

7           Circumstantial evidence is proof of one or more  
8 facts from which you could find another fact exists.

9           You should consider both kinds of evidence. The  
10 law makes no distinction between the weight to be given to  
11 direct or circumstantial evidence. It is for you to decide  
12 how much weight to give to any evidence.

13           Some evidence may be admitted during the trial  
14 for a limited purpose only. If I instruct you that an item  
15 of evidence has been admitted only for a limited purpose,  
16 you must consider it only for that limited purpose and for  
17 no others.

18           Certain things are not evidence, and you should  
19 not consider them as evidence in deciding the facts of this  
20 case. For example, the statements and the arguments of the  
21 attorneys are not evidence. Neither are questions or  
22 objections by the attorneys. Those are not evidence in the  
23 case.

24           Testimony that I instruct you to disregard is  
25 not evidence. Additionally, anything you see or hear when



1 the Court is not in session is not evidence and must not be  
2 considered by you in any way in determining what the facts  
3 are in the case.

4 There are rules of evidence which control what  
5 can be received into evidence. When a lawyer asks a  
6 question or offers an exhibit into evidence and a lawyer on  
7 the other side thinks that it is not permitted by the rules  
8 of law, that lawyer has an obligation to object.

9 If I overrule the objection, the question may be  
10 answered or the exhibit may be received. If I sustain the  
11 objection, the question cannot be answered and the exhibit  
12 cannot be received. Whenever I sustain an objection to a  
13 question, you must ignore the question and must not guess  
14 what the answer might have been.

15 Sometimes I may order that evidence be stricken  
16 from the record and that you disregard or ignore evidence.  
17 That means that when you are deciding the case, you must  
18 not consider the evidence which I told you to disregard.

19 In deciding the facts of this case, you may have  
20 to decide which testimony to believe and which testimony  
21 not to believe. You may believe everything a witness says,  
22 or part of it, or none of it.

23 In considering the testimony of any witness, you  
24 may take into account:

25 One, the opportunity and ability of the witness

1 to see or hear or know the things testified to.

2 Two, the witness' memory.

3 Three, the witness' manner while testifying.

4 Four, the witness' interest in the outcome of  
5 the case and any bias or prejudice.

6 Five, whether other evidence contradicted the  
7 witness' testimony.

8 Six, the reasonableness of the witness'  
9 testimony in light of all the evidence.

10 And, seven, any other factors that bear upon  
11 believability.

12 The weight of the evidence as to a fact does not  
13 necessarily depend on the number of witnesses who testify.

14 Similarly, because this is a civil case, during  
15 the course of trial, there may be evidence offered in the  
16 form of interrogatories or answers to interrogatories.

17 An interrogatory is a written question which is  
18 asked by one party of another prior to the trial and the  
19 other party must answer it under oath in writing.

20 Once again, unless I instructed you otherwise,  
21 you are to consider interrogatories and the answers to them  
22 just as if the questions had been asked and answered here  
23 in the courtroom.

24 You should pay close attention to the testimony  
25 and all evidence as it is presented because it may be

1 necessary for you to rely upon your collective memories  
2 concerning what the testimony was when you retired to  
3 deliberate on a verdict.

4           Although, as you can see, we have a court  
5 reporter who is making a record of everything that is said  
6 during the trial, typewritten transcripts cannot generally  
7 be prepared for use by the jury. So it's very important  
8 that you pay close attention to the testimony and evidence  
9 and not expect to have a typewritten transcript of  
10 testimony before you when you deliberate this case.

11           On the other hand, all exhibits which are  
12 admitted into evidence during the trial will be available  
13 to you for your detailed study during deliberations. So,  
14 if an exhibit is received into evidence but it's not fully  
15 read or shown to you at the time, do not be overly  
16 concerned because you will get to see the exhibit later  
17 during jury deliberations.

18           If you wish, you may take notes to help you  
19 remember what witnesses said. If you do take notes, please  
20 keep them to yourself until you and your fellow jurors go  
21 to the jury room to decide the case. Do not let note  
22 taking distract you from paying attention to witnesses and  
23 paying attention to exhibits. When you leave the  
24 courtroom, your exhibits should be kept with you but left  
25 in the jury room. And they will be protected in the jury

1 room and will be available for you when you return.

2 Whether or not you take notes, you should rely  
3 on your own memory of what was said. Notes are only to  
4 assist memory. They are not evidence in the case, and you  
5 should not be overly influenced by notes.

6 Because of your obligations as jurors to keep an  
7 open mind throughout the trial, coupled with your  
8 obligation to decide this case only on the basis of the  
9 evidence presented and in accordance with the instructions  
10 of law which I will give you, the -- I must instruct you  
11 that during the trial you are not to discuss the case among  
12 yourselves or with anyone else. The discussion of the case  
13 has to wait until all the evidence has been presented,  
14 until you've heard everything that is to be presented, and  
15 then that is the time for you to discuss it among  
16 yourselves in the jury room in the course of deliberations.

17 And I must also instruct you that you are to  
18 avoid listening, reading, or viewing any news account that  
19 might pertain to this case. I have no reason to believe  
20 that there would be any media coverage of this case. But  
21 if for some reason there was, it obviously is something  
22 that occurs outside the courtroom, and so it's your  
23 obligation to completely ignore it.

24 As jurors you must decide this case based solely  
25 on the evidence presented here within the four walls of

1 this courtroom. This means that during the trial you must  
2 not conduct any independent research about the case, any  
3 matters in the case, or anything that may concern the case  
4 or the parties or the individuals or corporations or  
5 companies.

6 In other words, you should not consult  
7 dictionaries or reference materials, you should not search  
8 the Internet, go to websites, blogs, or any other kind of  
9 electronic wireless communication to obtain information  
10 about this case because that would be totally information  
11 outside the courtroom that has nothing to do with the case  
12 and, even more importantly, you all need to hear and see  
13 the same evidence. So keep that in mind at all times.

14 With regard to cell phones, I allow you to have  
15 your cell phones. They must be turned off in the  
16 courtroom. And, of course, you should not discuss the case  
17 in any way with any outside parties, anyone outside the  
18 courtroom.

19 Sometimes it's hard to keep it quiet. But until  
20 that verdict is in, until this case is deliberated, you  
21 simply are not to discuss the case with anyone else.

22 You can use your cell phones for your personal  
23 schedules just to advise home when you expect to be home or  
24 something that might involve you which does not concern the  
25 case at all. You're certainly welcome to do that in the

1 hallways or in the jury room.

2 But beyond that, your cell phone use should be  
3 restricted. And everyone in this courtroom knows there are  
4 to be no cell phones on in the courtroom. So if you have  
5 used your cell phone, be sure you shut it off before you  
6 come back in.

7 If during the case you feel that it's necessary  
8 to communicate with me regarding anything in the case, I  
9 would ask that you simply write out a note and hand it to  
10 the court clerk, Dionna, and she will see to it that it  
11 gets to me.

12 Finally, I must instruct you that it's very  
13 important that you reserve judgment on the case until  
14 you've heard all the evidence. We can only present one  
15 witness and present one exhibit at a time. And until  
16 you've heard it all, you simply don't know what all the  
17 evidence is in the case. So keep an open mind.

18 And that's also important because you need to  
19 get the instructions on the law before you instruct --  
20 before you start discussing this case in deliberations.  
21 And I will give you those instructions. You will also have  
22 those in the jury room with you as well as the exhibits.  
23 And I'll read those instructions on the law to you before  
24 the attorneys make their final closing statements in the  
25 case.

1           This trial will begin when you come back from  
2 the lunch hour. And I've already outlined for you the  
3 contentions of the parties. But I remind you that that's  
4 not evidence. The only evidence that you may consider at  
5 arriving in a verdict in this case is the evidence admitted  
6 for your consideration within the four walls of this  
7 courtroom.

8           We will start the trial with the opening  
9 statements of the attorneys. The plaintiff and counsel for  
10 the defendants may make an opening statement or defendants  
11 may, if they choose, reserve their opening statement until  
12 after the plaintiff's evidence is in. That's completely up  
13 to them.

14           The opening statements of the attorneys are not  
15 evidence. As I mentioned before, anything the attorney  
16 says or does in the courtroom is not evidence before you.  
17 It may be designed to direct you to evidence, but the  
18 evidence is what comes from the witnesses, from the  
19 exhibits, or, in some cases, from the Court.

20           The opening statements of the attorneys are  
21 simply a descriptive outline of what they expect the  
22 evidence will show at trial.

23           The plaintiff will go first, and she will  
24 present the plaintiff's evidence through her attorneys.  
25 And after those witnesses or witness have testified and

1 that evidence has been admitted, the defense will have its  
2 opportunity to call any defense witnesses or present any  
3 defense exhibits that may be admissible in the courtroom.

4 After all the evidence has been presented, I  
5 will provide you with those detailed instructions on the  
6 law, and the attorneys will then have an opportunity to  
7 make their closing statements to you which, once again, are  
8 designed to assist you to understand what may or may not  
9 have been presented in the case. But it is not evidence in  
10 and of itself.

11 At that point in time you will then retire to  
12 deliberate in the jury room.

13 And what we will do now is I'm going to excuse  
14 you. And Ms. Negrete, our court clerk, will show you where  
15 the jury room is. And you will be free to come and go from  
16 that before -- whenever you're excused from the courtroom.  
17 And we'll call you in from there.

18 So please remember where you're seated in here  
19 because you need to return to your same seats when you come  
20 back in.

21 But because we're close to the lunch hour, I'm  
22 going to excuse you at this time. It's a little tight on  
23 the lunch hour to have you here at 1:00, so what I would  
24 like to do is start promptly at 1:15, if you could be back  
25 by then. I don't know if you're going out for a bite.



1     There's several restaurants in the area that are pretty  
2     good as far as I know. But I do ask that you be back and  
3     ready to go at 1:15 because we will start promptly at that  
4     time.

5                 So with that bit of news, I'll excuse you at  
6     this time. Ms. Negrete will show you the jury room. And  
7     we will start promptly at 1:15.

8                 COURTROOM ADMINISTRATOR: Please rise.

9                 (Jurors exit courtroom at 11:51 a.m.)

10                (The noon recess was taken.)

11                                 \*     \*     \*     \*

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1                   RENO, NEVADA, JANUARY 20, 2015, 1:20 P.M.

2                                   --oOo--

3

4                   (Outside the presence of the jury.)

5                   THE COURT: Have a seat, please.

6                   All right. The record will show we're convened  
7 out of the presence of the jury. I've been advised that  
8 counsel had a question or two for the Court. So whoever  
9 has the question, go ahead, please.

10                  MR. BOURASSA: Yes, Your Honor. Mark Bourassa.  
11 A couple of questions.

12                  First and foremost, prior to leaving the  
13 building for lunch, we received, for the first time, the  
14 Alessi binder of exhibits. That's the first time we've  
15 seen it, is about an hour and a half ago.

16                  And we were able to look at it in some ability  
17 over the lunch period and have ascertained that a number of  
18 the documents contained in that production are documents  
19 that we may not have actually ever seen before in the  
20 discovery process.

21                  I have conferred with Mr. Bayard, and his  
22 representation to me, and I take it well, is that we may  
23 have received the data with respect to some of those  
24 documents, but the documents themselves may not have been  
25 transmitted in the form that they've been provided to us

1 today. Clearly it's several hundred pages. I haven't had  
2 an opportunity in an hour and a half to go through the  
3 entirety of the binder, but it's something that is of great  
4 concern on the plaintiff's side. The production includes  
5 documents entitled "Receipts," things that track the  
6 accounting of various payments, the processing of payments,  
7 distribution of payments to the association, as well as  
8 ledgers that are updated and thus different than anything  
9 that you've seen previously in the case.

10 That just is something of concern to us I wanted  
11 to address with the Court and make a record of. Obviously  
12 I don't think we're going to get to those necessarily this  
13 afternoon. But it's something that we're going to have to  
14 take a long hard look at after 5:00 today to try to figure  
15 out what is or isn't something that we've actually had  
16 exposure to.

17 The second issue that I would like to get  
18 clarification from the Court on is in -- first in the  
19 statement of the case I think that was provided by  
20 defendant, they raised the issue of the bona fide error  
21 defense. As I recall, that is the first time I've heard  
22 the bona fide error defense raised in this case.

23 It is my understanding, and we are happy to  
24 provide a very short brief on the issue by tomorrow  
25 morning, that the bona fide error defense is essentially a

1 defense to liability, not a defense to damages, and, as  
2 such, we're concerned that going forward they're  
3 essentially going to seek to retry the issue of liability  
4 which, of course, this Court has already provided judgment  
5 in favor of the plaintiff.

6 So I wanted to raise that with the Court as  
7 well.

8 THE COURT: All right.

9 Mr. Bayard?

10 MR. BAYARD: Your Honor, three things. First,  
11 just as more of a housekeeping matter, and I should have  
12 informed the Court of this before, I actually have -- I've  
13 suffered four heart attacks in the last four years. I'm on  
14 a lot of medications.

15 One of the side effects of that medication is --  
16 it's kidney medication, which necessitates frequent trips  
17 to the restroom. I mean no disrespect to the Court or the  
18 jury. I try and manage those trips the best that I can.  
19 There are occasions, unfortunately, where the issue becomes  
20 urgent. And it's just one of the side effects of the  
21 medication. So I wanted to inform the Court of that.

22 In terms of the documents, most of the documents  
23 that are included as part of defendant's exhibits, the vast  
24 majority are Bates labeled, were previously produced to the  
25 plaintiff. One of the -- the tough issues in this case in

1 terms of presenting to the jury is because you've got  
2 payments that were made over a long period of time, you  
3 have charges that were incurred over a long period of time,  
4 you have multiple entities that were involved in the  
5 accepting and distribution of these payments, one of the  
6 challenges is presenting that information in a  
7 commonsensical way that the jury is going to be able to  
8 digest, review, and ultimately make decisions on.

9 The documents that were not previously provided  
10 to the plaintiff are simply current receipts that show the  
11 distribution of payments. These are payments that were  
12 made by the plaintiff. These are payments that the  
13 plaintiff asserts were improperly divided.

14 Plaintiff has long been in possession -- because  
15 of the fact that these go back to 2008 or before, the  
16 plaintiff has long been in possession of the same  
17 information showing that allocation of payment.

18 The additional documents which we plan on laying  
19 the foundation for through testimony are simply another way  
20 of showing that information broken down payment by payment.

21 And I would ask that plaintiff reserve any  
22 objection that they have to those documents to -- if and  
23 when they are sought to be either received or introduced  
24 into evidence.

25 In terms of the bona fide error defense, I think

1 that the plaintiff is overinterpreting what this Court has  
2 already ruled in the context of plaintiff's summary  
3 judgment motion.

4 As the Court may recall, plaintiff was pro per  
5 when she filed her summary judgment motion. She actually  
6 referenced a single document in her motion, and I believe  
7 it's document 149 on the docket, where she contested, or  
8 asserted, that the required debt collector language was not  
9 in there.

10 Mr. Bourassa stepped into the case in between  
11 the motion and the reply. And so whereas the motion itself  
12 was drafted by the plaintiff in pro per, the reply was, in  
13 fact, drafted by Mr. Bourassa. There was additional  
14 evidence and documents submitted.

15 But if you look at the FDCPA, the liability  
16 determination is -- which results in almost necessarily an  
17 award of damages, is really a two-pronged analysis. And  
18 the plaintiff carried the burden of showing the actual  
19 violation of the statute, in this case the failure to  
20 include the debt collector language. That is the only  
21 issue that was addressed by the Court in the summary  
22 judgment ruling.

23 Once that's found, then what the case law and  
24 what the statute itself says is that the burden then shifts  
25 to the defendant to show -- if they're asserting the bona

1     fide error defense, the burden shifts to the defendant to  
2     show the factual basis for that defense as it relates to  
3     the provisions of the statute.

4             And we're also happy to submit a brief on the  
5     issue. We did submit a jury instruction on the issue.

6             But I don't believe that the Court's analysis  
7     with respect to the first prong; in other words, showing  
8     that there was, in fact, a technical violation of the  
9     statute, means that the defendants are foreclosed from  
10    presenting evidence that despite that technical violation,  
11    that there's an excuse from damages based on the fact that  
12    there were reasonable procedures in place designed to  
13    prevent these type of errors and that it was, in fact, a  
14    mistake and not a result of either intentional conduct or  
15    some sort of systemic flaw.

16            So the Court has addressed that first step.  
17    Because if you don't have a violation, then there's no need  
18    to get to bona fide error. The Court has -- it's where the  
19    Court has found there was a violation, the very  
20    fact-intensive inquiry as to whether or not there were  
21    sufficient procedures in place and whether or not there was  
22    an actual bona fide mistake, that's still on the table.

23            I remind the Court that in the plaintiff's  
24    motion for summary judgment, she also sought summary  
25    judgment for breach of the fiduciary duty. In this Court's

1 order the Court says, Wait a minute, this was an  
2 adversarial relationship. There's no way that this was a  
3 fiduciary relationship.

4 So if the Court is going to foreclose the  
5 defendants from addressing issues of bona fide error, then  
6 at minimum the Court, I believe, should revisit that order  
7 and instruct the plaintiff that they're also barred from  
8 presenting any information or testimony or evidence on the  
9 fiduciary relationship because the Court has also addressed  
10 that in its order. And that's document 141.

11 THE COURT: Mr. Bourassa?

12 MR. BOURASSA: Yes, Your Honor. With respect to  
13 the bona fide error defense, having litigated untold  
14 numbers of these on both the plaintiff and the defense  
15 side, that is a defense raised when liability is at issue.  
16 Our position, quite simply, is that it was not raised in  
17 the motion for summary judgment and was therefore waived.

18 To the extent I hear an invitation from  
19 Mr. Bayard to retry or to expand the scope of our  
20 prosecution of the Fair Debt Collection Practices Act, I  
21 don't have any problem at all with that.

22 There's far more beyond a letter at issue here.  
23 But the fact of the matter is under the Fair Debt  
24 Collection Practices Act you only get one recovery for no  
25 matter how many violations they were against one defendant.



1           So with respect to a damage claim and with  
2           respect to the economy of the Court, the liability has been  
3           determined on a single letter for a single clause is  
4           inconsequential if we go out and prove that there are 30  
5           letters or 40 letters or other issues that would violate  
6           the Fair Debt Collection Practices Act. It doesn't impact  
7           the calculation of our client's damages as the statutory up  
8           to a \$1,000 award and then actual damages on top of that.

9           And so that being said, we will just stand on  
10          the fact that the bona fide error defense has been waived  
11          and shouldn't be presented.

12          THE COURT: Well, a couple of points here.

13          First of all, the Court has ruled as a matter of  
14          law that the defendants are in the violation of the FDCPA  
15          in connection -- certainly in connection with the one  
16          letter that was before the Court.

17          As I sit here, I don't recall if I was  
18          addressing more than one letter, but I certainly knew as to  
19          the one letter the Court clearly held that that was a  
20          violation of the act. And that is foreclosed. That's a  
21          ruling of law which the parties are going to have to deal  
22          with.

23          With regard to the issue of intent, it -- intent  
24          is relevant to the jury in determining the amount of  
25          damage. It's not relevant to the jury in determining

1 liability because the Court has already determined  
2 liability by virtue of the motion and the order which was  
3 filed. I believe it's 149. But whatever it was.

4 The -- with regard to the exhibits and the  
5 binder, that concerns me greatly because for reasons which  
6 were never presented, explained, or documented to the Court  
7 at all, the defendants took no role in the preparation or  
8 proposal of the Court's pretrial order in this case. And  
9 it's beyond me why that didn't happen and why relief wasn't  
10 sought from that at the time.

11 But the pretrial order in these cases is the  
12 roadmap to these trials. And one of its most obvious and  
13 specific purposes is to identify all exhibits and witnesses  
14 proposed to be called by each party.

15 And the Court wound up -- I'm looking at my  
16 document 147 in November of 2013 -- ruling that the Court  
17 will adopt plaintiff's proposed pretrial order as the  
18 Court's final pretrial order. Any proposed modifications  
19 will require a motion and showing of good cause. It is so  
20 ordered.

21 I mean, that order of the Court's over a year  
22 and two months old. And there's been no relief sought from  
23 it in any way.

24 The only way that evidence be not identified in  
25 the pretrial order can be admitted is if considerations of

1 manifest injustice are present to the party who's being  
2 disabled from presenting the evidence. And the Court's  
3 view, although I'm willing to look at each and every  
4 exhibit that may be offered here, is that I don't see  
5 manifest injustice to the plaintiff if a document is being  
6 offered by the defense that is either the same as the  
7 document identified by plaintiff or is the document which  
8 was produced in discovery in this case.

9           Because in that case I think the plaintiff would  
10 be aware of it, and fundamental notions of fair play  
11 require, in the Court's view, that the defense be  
12 offered -- be allowed to offer such an exhibit if, in  
13 fact -- if it, in fact, has been previously produced and it  
14 can be demonstrated that the opposing side was in  
15 possession of it.

16           Much the same goes for the witnesses. I know  
17 we're talking about a handful of witnesses here, three, I  
18 believe, maybe four. And my gross impression is that  
19 plaintiff's counsel have been aware of those witnesses and  
20 the potential of those witnesses, and so I don't see that  
21 they should be barred from the case because I don't see any  
22 prejudice to plaintiff.

23           But that then leads to another issue, and that  
24 is obviously documents which might be offered by the  
25 defense that have not been previously produced in

1 discovery. And I would tell you that the defense is going  
2 to have to make a convincing case that manifest injustice  
3 would occur if it was not allowed to present such evidence  
4 and plaintiffs are incapable of showing that it would be  
5 manifest injustice to them if they were, in light of, for  
6 example, not even knowing of the existence of a document  
7 prior to the day of trial, when arguably it should have  
8 been identified a year and three months ago in the pretrial  
9 order.

10 So that's where I stand on that. I think it's  
11 safe to assume that if you have a document -- first of all,  
12 I want the defense to review their documents with  
13 plaintiff's counsel before they're called out -- off in the  
14 jury -- in the presence of the jury. Because I want to  
15 know if there are documents which are in dispute. And I  
16 don't want that -- that -- any delay or frustration  
17 becoming a problem for the jury.

18 And I will send the jury home early if I have to  
19 or we'll stay late this evening or we'll come in early  
20 tomorrow morning, whatever the case may be.

21 I am not a judge who wants the jury sitting in  
22 the jury room while we're hashing out those kinds of  
23 fundamental questions. So I'm going to leave it to counsel  
24 to address those issues in a way that does not interfere or  
25 damage the case.

1 I think I said, but just to be clear, insofar as  
2 intent is concerned, insofar as any violations of the act,  
3 I think that that's a fair issue of admissibility on the  
4 issue of damages but not on liability. So some of this is  
5 where we are.

6 MR. BAYARD: Your Honor, on the issue of  
7 fiduciary duty, given the Court's previous ruling, is that  
8 still at issue?

9 THE COURT: Oh, yes. I didn't address that.  
10 Well --

11 MR. BAYARD: And I can read to the Court --

12 THE COURT: No, no, I'm well familiar with the  
13 order. But what I did was I denied plaintiff's motion for  
14 summary judgment wherein she was seeking summary judgment  
15 on the issue of fiduciary duty, and I held that there had  
16 been no showing of any fiduciary relationship.

17 And there was no way under the circumstances of  
18 this case and the undisputed evidence which is before the  
19 Court that a debt collector serves in a fiduciary capacity  
20 to a plaintiff.

21 Now, I don't -- I don't know if plaintiff has  
22 other evidence that they intend to offer on the fiduciary  
23 issue. But I -- addressing the order itself, I was not --  
24 that was not a ruling on the merits, so to speak, it was a  
25 ruling on plaintiff's motion for summary judgment. And I

1 was denying summary judgment based upon that conclusion of  
2 the Court.

3 But to take it the next step and say that was a  
4 judgment in favor of the defense is not anywhere I'm  
5 prepared to go when there wasn't even a motion or a  
6 countermotion for summary judgment.

7 So that is my view on the law. I don't know  
8 what the evidence is going to be on this case. But if the  
9 evidence turns out to be that the Alessi defendants were  
10 nothing more than debt collectors serving in a debt  
11 collection capacity on behalf of the ArrowCreek Homeowners  
12 Association, there's no fiduciary capacity. I don't know  
13 the extent and the role of what they were doing or how they  
14 were doing it. I mean, that's evidence that has not been  
15 presented before the Court.

16 And I would assume that if plaintiff is intent  
17 on pursuing that theory that you in good faith have some  
18 evidence that would bear upon that issue. But I'm not --  
19 I've got to hear the evidence first.

20 MR. BAYARD: Okay. Thank you, Your Honor.

21 THE COURT: Further questions?

22 MR. BOURASSA: Not at this time, Your Honor.

23 THE COURT: Okay. Let's bring the jury in,  
24 please.

25 MR. BOURASSA: Thank you.

1 COURTROOM ADMINISTRATOR: Yes, Your Honor.

2 (Jurors enter courtroom at 1:41 p.m.)

3 THE COURT: Have a seat, please.

4 The record will show that we are reconvened.  
5 Counsel and the parties are present and the jury is  
6 present.

7 Ladies and gentlemen, I'm sorry for the delay  
8 that's occurred here. I would tell you that in the course  
9 of just about every trial there's one or two occasions  
10 where the Court has to have a mini hearing in front of the  
11 attorneys just to make sure everyone's on the same page  
12 about how this case is being presented. And that's what  
13 has just occurred.

14 I would tell you that we started promptly --  
15 actually a little before 1:15, and it took us a little  
16 while to get through that. That could happen again. I  
17 don't know that it will. But these are common in a trial.

18 And I would tell you that I am a judge who is  
19 very mindful of jury's time. And I will not be wasting  
20 your time while you're sitting in that jury room and  
21 something isn't getting done out here. I can assure you of  
22 that.

23 And to the extent I can, if I have to have a  
24 hearing that shouldn't be in front of the jury -- and these  
25 are common, don't infer anything from that, because I can

1 tell you that in almost every trial there have to be some  
2 hearings outside the presence of the jury. But I will  
3 attempt to schedule those after you go home or before you  
4 come in in the morning or even over the lunch hour. I do  
5 everything I can to maximize your time.

6 So bear with us. I'm sorry we've lost a half  
7 hour of your time. And I'm mindful with that. But I can  
8 confirm with you that it's for a good purpose.

9 So where we are at this point is to begin the  
10 plaintiff's -- begin the trial. And that begins with the  
11 opening statements, as I mentioned earlier.

12 And, Mr. Bourassa, are you --

13 MR. BOURASSA: I am, Your Honor.

14 THE COURT: -- ready to go forward?

15 MR. BOURASSA: Yes, Your Honor. Thank you.

16 Ladies and gentlemen of the jury, my name is  
17 Mark Bourassa. I have the privilege of representing  
18 Melinda Ellis, along with Mr. Richards, an attorney from my  
19 office.

20 And I think during the preliminary introductions  
21 you may have heard Hunter Blackburn's name. Mr. Blackburn  
22 makes all of the electronic gizmos and gadgets in the  
23 courtroom work appropriately, whereas the rest of us are  
24 literally all thumbs when it comes to that.

25 Let me first take a second to thank you so much



1 for your service. It is always a challenge to come to a  
2 situation like this, deal with the imposition on your time  
3 and imposition on your lives. And I'm sure both tables  
4 appreciate the fact that you're here.

5 It's my understanding a couple of you served in  
6 the military. Thank you very much for your service.

7 Those things being said, what this case is about  
8 is about one of the most fundamental rights as an American,  
9 that is property ownership.

10 And what you're going to see in this case is a  
11 lot of evidence related to the obligations of being a  
12 property owner up here in Nevada.

13 What you're going to see is evidence of Melinda  
14 Ellis making a really substantial investment in living in  
15 the community that she's lived in for 30 years and  
16 purchasing a house and a little investment property and  
17 hoping for the best.

18 And what you're going to see is that evidence  
19 that Ms. Ellis is familiar with the homeowners'  
20 associations and familiar with the homeowners' association  
21 obligations and familiar with the whole process of paying  
22 those dues and getting benefits for those dues.

23 But as we all know in those middle 2000s, the  
24 boom years, everybody was happy, things were going well.  
25 And then things started to slide.

1           Ms. Ellis is going to come up on the stand and  
2 she's going to tell you about her circumstances at that  
3 time. And Ms. Ellis is going to tell you how she faced  
4 some financial problems and that she did, in fact, fall  
5 behind on the HOA payments for both of the properties  
6 within this ArrowCreek subdivision.

7           Ms. Ellis is going to have the opportunity to  
8 explain what happened, to you, so that you understand what  
9 her -- I'm sure what a number of other folks up here in  
10 Washoe County, Nevada, United States have gone through.

11           She's also going to explain to you what she's  
12 done about it since. And that is Ms. Ellis has done what  
13 we all would want to do, I think, is she wants to pay what  
14 she owes.

15           But this is America, and we don't pay more than  
16 we owe. That's what this case comes down to.

17           Because when she fell behind on those payments,  
18 the evidence is going to show that a company called Alessi  
19 Trustee Corporation started putting liens on her property.  
20 And they put liens on her property for what they alleged  
21 were those past due fees. And the evidence is going to  
22 show that they started adding thousands upon thousands upon  
23 thousands of dollars of fees, of attorneys' fees, of other  
24 charges so they put Ms. Ellis in a situation where she  
25 couldn't even tell how much she actually owed the

1 association versus how much she owed, or purportedly owed,  
2 Alessi Trustee Corporation.

3           You're going to see evidence that Ms. Ellis in  
4 making her payments made every effort to work out a  
5 resolution with Alessi Trustee Corporation. She, in fact,  
6 made payments trying to make that happen, but that Alessi  
7 Trustee Corporation continued to add more and more charges  
8 to her account as she went along.

9           In fact, ladies and gentlemen, you're going to  
10 see evidence that Alessi Trustee Corporation would file  
11 repeated liens on her property or would send her repeated  
12 notices of default in the mail where, for example, for one  
13 month to the next the amount demanded might jump \$1,000, or  
14 in some instances jump 4- or 5- or \$8,000, where in some  
15 instances in one month they would ask for \$12,000 and a  
16 year later ask for \$32,000.

17           And all along you're going to hear Ms. Ellis  
18 explain that she called them, that she sent them letters,  
19 that she e-mailed them, and she tried to get an accounting  
20 of her situation. You're going to hear her tell you she  
21 was unable to do that.

22           As the process went along, you're going to hear  
23 evidence, again, from Ms. Ellis that she could see the  
24 clouds on the horizon with -- the real estate market was  
25 getting a little bit difficult. And, of course, 2005,

1 2006, 2007, she decides now's the time to get out of the  
2 real estate market.

3 And you're going to hear Ms. Ellis tell you that  
4 she listed her properties for sale and that she tried to  
5 sell those properties, that she talked to real estate  
6 agents, and that because of the liens that were placed on  
7 her property and because of her unwillingness to just give  
8 money away to people that couldn't account for what they  
9 were claiming they were owed, she was unable to sell that  
10 property.

11 So we're going to see that time has gone by. As  
12 we all know, property values have plummeted.

13 You're going to hear Ms. Ellis testify about  
14 those issues related to her properties. And you're going  
15 to hear Ms. Ellis testify about what she wants to do with  
16 those properties to this date.

17 So that being said, we're going to go through a  
18 few categories of testimony with Ms. Ellis. She's going to  
19 tell you a little bit about herself. She's going to tell  
20 you about the trouble that she's had in terms of financial  
21 issues. She's going to tell you about trying to climb out  
22 of that hole. And she's going to tell you about the  
23 problems that she's had with Alessi Trustee Corporation.

24 Forgive me. It's going to get confusing because  
25 you've got Alessi this and Alessi that.

1                   She's going to tell you about Alessi & Koenig,  
2 LLC, which is the law firm.

3                   And throughout that process, I apologize for  
4 this because I went to law school, not to math school,  
5 we're going to go through a lot of numbers. And we're  
6 going to look at a lot of checks.

7                   And we're going to see that Ms. Ellis was  
8 writing checks. We have copies of them and copies of the  
9 endorsements on them where she was specifically asking the  
10 money she paid to be applied to her homeowner association  
11 dues. And that's not what happened.

12                  Alessi Trustee Corporation would take that  
13 money. Alessi & Koenig would take that money. And ledgers  
14 don't reflect how much she actually paid when it comes down  
15 to how much went to this Alessi, how much went to that  
16 Alessi, and how much went to her actual dues. And one of  
17 the reasons for that, one of the reasons why she's still in  
18 that today, you're going to hear that testimony.

19                  And you're going to actually have an opportunity  
20 to hear from Mr. Alessi himself. And Mr. Alessi is going  
21 to come in here and, I'm sure, try to talk his way through  
22 the situation. His testimony is whatever it is.

23                  But Mr. Alessi's going to have to answer  
24 questions about why the Nevada Department of Financial  
25 Institutions issued a cease and desist order against Alessi

1 Trustee Corporation in 2008, I believe. And he's going to  
2 have to account for what happened to Ms. Ellis' money.  
3 Where did it go? Did it go to the right place? Did it go  
4 to the legal place? Those are the questions we're going to  
5 be asking Mr. Alessi.

6 If you didn't know, Mr. Bayard here, who I've  
7 known over the course of this case, will also be  
8 testifying. He is an attorney with the Alessi & Koenig  
9 firm.

10 And it's a little weird in a case like this to  
11 be calling opposing counsel to the stand. I'm sure he'll  
12 do the best that he can. We'll be asking those same  
13 questions to him: Where is this accounting? How do we  
14 know how much she paid? How do we know how much she owed?  
15 How could she have known that in 2007, when she was asking,  
16 or 2008, when she was asking, 2009, 2010?

17 And, in fact, ladies and gentlemen, the evidence  
18 is going to show there are still liens on her property  
19 today still clouding her title.

20 So what we have in this case, ladies and  
21 gentlemen, is we have currently three claims for relief,  
22 three causes of action, if you will, as to areas that  
23 Ms. Ellis thinks that -- or is asking you to find that  
24 Alessi has done wrong.

25 The first issue listed in her complaint is

1 breach of a fiduciary duty. And you're going to hear  
2 Ms. Ellis provide evidence to you that she is, in fact, a  
3 member of the ArrowCreek Homeowners Association. And so as  
4 a member of the association, while it's really awkward in  
5 this circumstance, the Alessi & Koenig law firm represents  
6 her as part of the association.

7 And she is going to tell you that she has an  
8 expectation that the Alessi & Koenig law firm or Alessi  
9 Trustee Corporation before that, because of that very  
10 strange but very unique situation, has a heightened  
11 financial responsibility to be accountable to her about  
12 what they do when they take her money.

13 They have an obligation to show her, to account  
14 for, and to keep proper records of what happens to the  
15 money, where it goes. So we'll be addressing that. We're  
16 going to say, I'm sure the evidence you'll hear will show,  
17 that Ms. Ellis believes that they've breached that duty  
18 because they can't account for the money. And, in fact,  
19 they still have liens on her property.

20 We have a second claim under the Fair Debt  
21 Collection Practices Act. The Fair Debt Collection  
22 Practices Act encompasses all kinds of rules and  
23 regulations related to how an entity like Alessi Trustee or  
24 Alessi & Koenig can collect debt.

25 Now, the judge has already read to you in the

1 initial statements of the case that this Court has found  
2 already, as a matter of law, that Alessi has violated the  
3 Fair Debt Collection Practices Act and that the issue left  
4 for that particular claim is not a question of liability  
5 but is a question of damages.

6 So we'll go through some of the information on  
7 that, and we'll present that evidence to you. You'll have  
8 an opportunity to make a determination at that time on two  
9 components of damages under the Fair Debt Collection  
10 Practices Act. One is a statutory award of up to \$1,000  
11 and one is basically an award of whatever damages you  
12 believe she's incurred, her actual damages.

13 So we'll talk about that. She'll talk about her  
14 issues with selling the property, what the valuation was.  
15 And we'll go forward with evidence on that claim.

16 The third claim, and it always confuses people,  
17 is a claim of racketeering. And it's a civil racketeering  
18 case, so we're not going to have mobsters or gangsters or  
19 anything like that in here. Al Capone is long gone, so we  
20 won't deal with that.

21 But what we have is we have a problem in the  
22 accounting of Alessi, either the trustee corporation or the  
23 law firm -- I'm going to get them confused, and I apologize  
24 for that -- of taking money that they are not entitled to.  
25 And as a result, because they've done it on a number of



1 occasions, because it is their practice, we're going to  
2 present evidence that's going to show you, and, of course,  
3 the judge will instruct you on the law for the issue,  
4 exactly how racketeering applies to the case and exactly  
5 why each Alessi entity has engaged in that conduct.

6 And as a result of that, at the end of the case,  
7 we're going to be asking you for additional damages for  
8 that.

9 And at the very, very end of all of that, we're  
10 going to ask you to award punitive damages to punish Alessi  
11 Trustee Corporation and Alessi & Koenig for their behavior  
12 and their failure to account properly under the rules of  
13 the State of Nevada for the monies that they took and the  
14 monies that should have been credited to Ms. Ellis.

15 And so, ladies and gentlemen, we're going to  
16 take some time, it's going to be awfully boring on some of  
17 the subjects, especially the accounting parts. And for  
18 that I sincerely apologize. Those are issues that simply  
19 have to be put before you in order to prove the case.

20 And so I really, really appreciate your patience  
21 in sitting through the process, keeping your attention up,  
22 and trying to follow along.

23 At the end of the day, Ms. Ellis is going to be  
24 asking you for \$1,000 of statutory damages, which is the  
25 maximum allowed under the Fair Debt Collection Practices

1 Act statutory damage issue.

2 She's also going to be asking you for \$512,000  
3 in actual damages, under whatever theory you think is  
4 appropriate, whether you think that's the breach of  
5 fiduciary duty, whether you think that that's the Fair Debt  
6 Collection Practices Act, or whether you think that's the  
7 racketeering claim.

8 And on top of that, she's going to ask you to  
9 award whatever you deem appropriate as a punitive damage to  
10 prevent Alessi or Alessi from doing this again. Thank you.

11 THE COURT: Thank you, Mr. Bourassa.

12 The defense now has the right to make its  
13 opening statement at this time. Or they may reserve that  
14 right.

15 MR. BAYARD: We'd like to --

16 THE COURT: Mr. Bayard?

17 MR. BAYARD: I'm sorry, Your Honor. We'd like  
18 to make our opening statement now, if it pleases the Court.

19 THE COURT: All right. Go ahead, please.

20 MR. BAYARD: Good afternoon, everyone. I've  
21 known Mr. Bourassa for a number of years now, and this is  
22 the first time I've had the opportunity to see him in  
23 court. He's a tough act to follow. He's -- pretty sharp  
24 there, Mark.

25 But as much as I like Mr. Bourassa personally, I

1 do have to take issue with many of the things that he told  
2 you and many of the things that he told you you're going to  
3 hear during the course of this trial because I don't think  
4 you are going to hear that.

5 Before I get into that, let me reintroduce  
6 myself. My name is Thomas Bayard. And seated over there  
7 is Steven Loizza. And we represent what has been  
8 collectively referred to as the Alessi defendants.

9 And despite efforts to make it seem more  
10 confusing than it is, it really is simply two companies.  
11 There is a company called the Alessi Trustee Corporation  
12 that was an entity that did HOA collection work for a  
13 number of years in Nevada, and then the Alessi & Koenig Law  
14 Firm took over for what we call ATC for Alessi Trustee.

15 They are sequential. In other words, the Alessi  
16 Trustee Corporation was around for a number of years, and  
17 the law firm took over and kind of ran with it, with the  
18 processes from there. It's really not that confusing.  
19 There's kind of a line in the sand in 2008 when that  
20 transition took place. But you'll hear all about that.

21 And I think there -- you know, when the Court  
22 started this morning, I thought it very refreshing that the  
23 judge took time to give you, as at that point was a panel  
24 of jurors, kind of historical context.

25 Remember the judge was talking about kind of how

1 we ended up here with our jury system and the breakaway  
2 from old England.

3 And it's particularly relevant to this case  
4 today because today's case is also rooted in history. Back  
5 in merry-old England, you remember the Court talked about  
6 some of the crazy stuff that went on. They used to have  
7 something called debtor's prisons.

8 So what they would do -- if you ever read  
9 Charles Dickens, they used to throw people in jail if you  
10 couldn't pay their debt. Now, it never made any sense to  
11 me because if you're in jail, how are you going to make  
12 money to pay your debt? It was kind of crazy. But that's  
13 what they did. And if you didn't have family members to  
14 get you out, you just rotted there.

15 So when the calmness broke away, there are a lot  
16 of things that are upset. Taxation, as the Court  
17 mentioned. But the concept of debtor's prisons was  
18 something else that they weren't that happy with.

19 So in that same Constitution that the judge  
20 talked about, there's protection forwarded by bankruptcy so  
21 that people don't have to go to debtor's prison. They can  
22 get a fresh start through the country's bankruptcy code.

23 But we've come a long way since then. And I  
24 think it was in about 1977 that the Congress said, You  
25 know, there's a problem with debt collectors going crazy.

1           Everyone's probably heard stories about phone  
2           calls to work, phone calls throughout the day, phone calls  
3           at night, unnecessary threats, all of these things that  
4           were going on that even though the debt may be legitimate,  
5           the practice of collecting it wasn't always the case.

6           And so Congress passed something called the Fair  
7           Debt Collection Practices Act. And the purpose of the  
8           statute is exactly like it sounds, to ensure fair debt  
9           collection.

10           So in this case, one of the claims that  
11           Ms. Ellis has brought, as indicated by Mr. Bourassa, was a  
12           violation of this Fair Debt Collection Practices Act. It  
13           sounds really ominous. It sounds like a very bad thing.  
14           And it is. Because laws are meant to be followed. Rules  
15           are meant to be followed.

16           But I think it's important to give you context  
17           in terms of what are we talking about here because the  
18           Court has already made some findings in this area.

19           One of the rules that the FDCPA put in place is  
20           the rule that whenever you communicate with a debtor,  
21           certain information must be in the communication, in the  
22           letters.

23           In this case, the Court has made a determination  
24           that one of the letters that was sent by the Alessi  
25           defendants to Ms. Ellis didn't say in there that Alessi &

1 Koenig is a debt collector. That's the violation, that the  
2 letter forgot, for whatever reason, that -- to include that  
3 language. And that is a technical violation of the  
4 statute. I'm not sure it's a technical violation worth  
5 half a million dollars, but that's what happened.

6 You will hear testimony today -- or, excuse me,  
7 not today but probably tomorrow, from Mr. Alessi. And  
8 Mr. Alessi will testify that the mistake in not including  
9 the language in the letters was not a result of some  
10 nefarious scheme, was not a result of an effort to defraud  
11 or mislead Ms. Ellis, it was simply a mistake.

12 Ms. Ellis will testify, and I imagine that she's  
13 going to testify that she knew full well when she got that  
14 letter that Alessi & Koenig was a debt collector. You will  
15 probably have an opportunity to see the letter in question.  
16 You'll probably have an opportunity to see several letters  
17 that were sent to Ms. Ellis.

18 And you will see that it is crystal clear from  
19 each and every correspondence with Ms. Ellis that the  
20 Alessi defendant involved -- was, in fact, a debt  
21 collector, that a debt was being collected, that a claim  
22 was being enforced against her property.

23 So while you may find -- or you will have to  
24 find, because the Court has already determined there was a  
25 technical violation, when it comes to the FDCPA claims, you

1 are not going to hear any evidence, you are not going to  
2 see any documents, you're not going to hear any testimony  
3 that would support a finding that anybody involved on the  
4 defendant -- from the defendants, whether it's the Alessi  
5 Trustee Corporation, whether it's Alessi & Koenig, had any  
6 type of intent to commit any wrongful act to mislead, to  
7 cause any confusion, or to cause any harm to Ms. Ellis.

8 And that's going to be very important.

9 And as Mr. Bourassa said, when Mr. Alessi takes  
10 the stand, he's going to have to answer questions. And  
11 that's true. And I ask that you listen very carefully to  
12 those questions, you listen very carefully to the answers  
13 Mr. Alessi provides.

14 At the end of the day, you will hear Mr. Alessi  
15 testify about all of the procedures that were in place, all  
16 of the efforts that the Alessi defendants take to follow  
17 the law, to do it the right way.

18 At the end of the day, the evidence is going to  
19 lead you to an inescapable conclusion that there is no  
20 basis for awarding any sort of damages based on the  
21 negative intent or the malicious intent or the nefarious  
22 intent of any of the defendants in this case.

23 To the extent that mistakes were made, they were  
24 just that, mistakes.

25 Ms. Ellis has also brought a claim for civil

1 racketeering. And I'm glad that Al Capone is not around  
2 anymore. And Mr. Alessi certainly isn't Al Capone.

3 And to be frank with you, I'm not sure what  
4 evidence you're going to hear on that claim. Because I've  
5 never understood what evidence the plaintiff has to support  
6 a racketeering claim.

7 Mr. Bourassa mentioned an issue with payments.  
8 And essentially what Mr. Bourassa and Ms. Ellis is going to  
9 testify to is that she has a problem with the way that her  
10 payments applied -- were applied in this case.

11 Now, remember, the first words that were out  
12 of -- almost the first words that were out of Mark's mouth,  
13 and certainly one of the first things that you're going to  
14 hear from Ms. Ellis, because she can't avoid it, is that  
15 she was, in fact, delinquent to her homeowners association.

16 We can put that issue aside. This is not a case  
17 where a rogue collection agency or rogue law firm was going  
18 after somebody who didn't owe money. The fact of the  
19 matter is that, like a lot of people, Ms. Ellis faced  
20 financial problems that left her unable to pay her bills,  
21 it left her unable to pay her assessments.

22 You're going to hear testimony from the manager,  
23 from the ArrowCreek Homeowners Association, who will  
24 testify how that lack of payments -- when homeowners don't  
25 pay their assessments, how it affects the association.



1           You're going to hear testimony that the  
2           association has a collection policy in place, a copy of  
3           which, each year, is provided to everybody in that  
4           association, including Ms. Ellis.

5           You're going to hear testimony that collection  
6           policy specifically says, If you fall delinquent in your  
7           assessments, you are going to be placed in collections. If  
8           you are placed in collections, your account is going to be  
9           charged for each and every one of the collection activities  
10          that are made necessary by the fact that you fell  
11          delinquent on your assessment payments.

12          You're going to hear testimony that a specific  
13          fee schedule has been sent -- in fact, is sent every year  
14          to every homeowner in the association, including Ms. Ellis,  
15          that not only puts them on notice of what's going to happen  
16          if they fall delinquent, it gives them a specific breakdown  
17          of each and every charge they're going to be incurred --  
18          that's going to be incurred if they fall delinquent, if  
19          they are forced into collections.

20          You're going to hear testimony that Nevada law  
21          and the associations governing documents, which are called  
22          CC&Rs, both specifically provide that if you fail to pay  
23          your homeowner's assessment that you will have a lien  
24          placed against you on your property.

25          You will hear testimony that both Nevada law and

1 the CC&Rs specifically provide that if a lien is placed on  
2 your property that you, as the delinquent homeowner, are  
3 going to be responsible for paying the charges that are  
4 associated with that lien.

5           You're going to hear testimony that both Nevada  
6 law and the CC&Rs specifically state if you have a lien  
7 placed on your property and you still don't pay it that  
8 you're going to be placed into a collection process that  
9 starts with a nice friendly letter and ends with you  
10 potentially losing your home. Serious, serious  
11 consequences.

12           You're going to hear that Ms. Ellis was informed  
13 of these consequences time and time and time and time  
14 again.

15           You're going to hear testimony that she failed  
16 to take steps to avoid these additional consequences from  
17 happening.

18           You're going to hear testimony that says that if  
19 when she got the -- what's called a notice of intent to  
20 lien, which is a very friendly initial letter that says,  
21 Hey, you're behind, that if she would have paid that the  
22 whole process would have stopped.

23           You're going to hear testimony that she didn't  
24 pay. You're going to hear testimony that she got a lien  
25 that, Okay, you ignored our first notice, here's the second

1 one, now we've got an actual lien your property, please  
2 take care of it. And the testimony is going to be that she  
3 didn't pay that either.

4           You're going to hear testimony that after  
5 that -- a month went by after she got the lien that she got  
6 what's called a notice of default, which says in big bold  
7 letters across it -- you're going to see a chance to see  
8 the document -- Notice of Default and Election to Sale. In  
9 bold letters across the top it says, Warning, if you don't  
10 pay this, bad things are going to happen. We're going to  
11 foreclose on you. You're going to lose your property.

12           The test- -- the evidence is going to show --  
13 the testimony is going to show that she didn't pay that  
14 either. The evidence is going to show that she then got  
15 what's called a notice of sale on both of her properties  
16 that says, Okay, you've ignored us up until now, so  
17 pursuant to Nevada law, pursuant to the provisions of the  
18 CC&Rs of your association, we're setting the property for  
19 sale.

20           The evidence is going to show that she still  
21 didn't pay, that instead she went and filed a lawsuit. And  
22 that's how -- and we ended up here today.

23           The evidence is going to show that, yes, over a  
24 certain period of time from now back, a year or two, that  
25 she has been making payments. And I'm sure that

1 Mr. Bourassa will walk you through check after check after  
2 check.

3 As you listen to the evidence, and as you look  
4 at the various documents, it's important to keep in mind  
5 that each and every thing that happened was a result of the  
6 plaintiff's conduct. You'll see documents. You're going  
7 to see ledgers that show that despite these payments, by  
8 the time she started making payments she was so far behind  
9 that simply paying her monthly assessments without dealing  
10 with the delinquency wasn't enough.

11 You're going to hear testimony from Mr. Alessi  
12 about that under Nevada law money that is incurred in the  
13 collection process, money that is incurred because of your  
14 failure to pay your assessments, collection fees and costs,  
15 attorneys' fees and costs are all specifically treated  
16 exactly the same as the original assessments from the  
17 association.

18 You're going to hear testimony from Mr. Alessi  
19 that there is a specific statute that says that, that says  
20 that all collection fees and costs incurred enforcing that  
21 assessment obligation are to be treated exactly like  
22 assessments.

23 You will hear testimony that every single dollar  
24 that Ms. Ellis paid was properly applied to her account.

25 You're going to see document after document,

1 ledger after ledger that shows exactly how each and every  
2 payment she made was applied. Some of the money went  
3 towards the association's portion of the obligation, some  
4 of the money went toward the collection entity's portion of  
5 the obligation. They were all applied to her account. She  
6 got credit for each and every dollar.

7           You may hear testimony, as Mr. Bourassa alluded  
8 to, that as a result of these liens being placed on her  
9 property, that she suffered damages in excess of a half a  
10 million dollars, \$500,000 plus.

11           You're not going to hear any corroboration of  
12 that testimony. You're not going to hear any expert  
13 testimony saying that that's why her properties didn't  
14 sell. You may not hear any testimony that her properties  
15 were ever on the market.

16           The reality is that the liens were placed on the  
17 property because Ms. Ellis didn't pay her assessment  
18 obligation. The process that was followed is a process  
19 that is set forth in the law. And that's for each and  
20 every step of the way.

21           If there's any -- and I don't believe that  
22 there's going to be any evidence that shows that there was  
23 any actual damages, as Mr. Bourassa used the term, that  
24 flows from the fact that she wasn't told in one letter that  
25 Alessi & Koenig was a debt collector or that because the

1        liens were placed on her property.

2                At the end of the day, the evidence is going to  
3        be that -- like I said, that Ms. Ellis is responsible for  
4        any ramification that flowed from the fact that she was in  
5        the collection process is directly attributable to  
6        Ms. Ellis' conduct. Everything else is window dressing.

7                You will hear testimony possibly from Mr. Alessi  
8        about this cease and desist order. And Mr. Alessi will  
9        definitely speak for himself. But you'll hear testimony  
10       that there was a mistake made by the Financial Institution  
11       Division for the State of Nevada. You will hear testimony  
12       that they were sued in this very case because of that  
13       mistake.

14               You will hear testimony that they admitted in  
15       this very courtroom that they made a mistake.

16               And so ultimately the -- yes, that event did  
17       occur, but it has ultimately no bearing on what Ms. Ellis  
18       has gone through, it has no bearing on the facts and  
19       circumstances involving Ms. Ellis or her properties.

20               So I was remiss and I didn't thank you guys for  
21       being here at the beginning. I really do appreciate it.  
22       Everyone here on both sides, I think, understands that this  
23       is not the world's sexiest issue.

24               We're dealing with collections, lots of numbers  
25       and lots of math, lots and lots of ledgers and reports and

1 stuff like that. And it's going to be hard at times to  
2 stay focused and pay attention. It's hard for us, I think,  
3 sometimes and we live this stuff.

4 And so we very much appreciate your dedication,  
5 your coming in here early in the morning, your having to  
6 answer questions and now having to sit silent and listen to  
7 the lawyers talk, the witnesses talk and stuff. And so we  
8 really do appreciate that.

9 In closing I just ask that you listen very  
10 carefully to the evidence that's presented. Listen very  
11 carefully to the questions. Listen very carefully to the  
12 answers.

13 And before you guys are sent back into the jury  
14 room to deliberate, we'll have an opportunity to talk to  
15 you again and explain to you what -- what we think that it  
16 all meant. And we're not going to agree then, just like we  
17 don't agree now.

18 But your job is going to be made so much easier  
19 if you really do pay attention and listen to everything  
20 that happens so when you go back in there, you'll be able  
21 to have an informed discussion, once the judge gives you  
22 permission to talk about the case, talk about the issues,  
23 and reach a fair result. That's all anybody can ask of  
24 you.

25 And thank you very much. I look forward, at the

1 end of the case, for the opportunity to talk to you again.  
2 Thank you.

3 THE COURT: All right. That will take us to the  
4 commencement of the evidence to be offered on behalf of  
5 plaintiff.

6 Mr. Bourassa, do you have your first witness,  
7 please.

8 MR. BOURASSA: Yes, Your Honor.

9 Plaintiff calls Melinda James, also known as  
10 Melinda Ellis.

11 COURTROOM ADMINISTRATOR: Please raise your  
12 right hand.

13 Do you solemnly swear that the testimony you  
14 shall give in the cause now before the Court shall be the  
15 truth, the whole truth, and nothing but the truth, so help  
16 you God?

17 THE WITNESS: I do.

18 COURTROOM ADMINISTRATOR: Please be seated.

19 Please state your name and spell your last name  
20 for the record.

21 THE WITNESS: My legal name is Melinda James,  
22 now, that's my maiden name. But during this case I was  
23 Melinda Ellis. So M-e-l-i-n-d-a. Last name Ellis,  
24 E-l-l-i-s.

25 COURTROOM ADMINISTRATOR: And can you please



1 tell us your city and state of residence.

2 THE WITNESS: Reno, Nevada. Washoe. Thank you.

3 THE COURT: All right. Go ahead, please.

4 MR. BOURASSA: Thank you, Your Honor.

5 MELINDA ELLIS

6 called as a witness on behalf of the

7 Plaintiff, was examined and testified as follows:

8 DIRECT EXAMINATION

9 BY MR. BOURASSA:

10 Q. Ms. Ellis, since I've known you, you've always been  
11 Ms. Ellis to me. And I don't want to disrespect you by  
12 calling you Ms. James and then Ms. Ellis and then Ms.  
13 James.

14 So if it doesn't offend you, I'm going to call  
15 you Ms. Ellis throughout. That's what the caption says.  
16 Is that okay with you?

17 A. That's fine.

18 Q. All right. Ms. Ellis, we had the pleasure of  
19 hearing a lot of details about the jury before we started.

20 Could you tell us a little bit about yourself.  
21 Where do you live?

22 A. I live in ArrowCreek, in Reno, Nevada.

23 Q. What's the address of that property?

24 A. 1200 Broken Feather Court.

25 Q. And how long have you lived there?

1       A.       I've lived there since 2000 at the address I'm at  
2 right now.

3       Q.       Where did you live prior to that?

4       A.       Well, I moved to Reno in 1980. I was originally  
5 from Southern California.

6       Q.       Did you live -- how many community association  
7 properties have you ever lived in in the Reno area?

8       A.       Well, in 1980, when I moved here with my husband, we  
9 moved a business here, and we moved into Lakeridge Shores.  
10 I built a house there in Lakeridge Shores. And I lived  
11 there for approximately 20 years, until 2000.

12      Q.       What facilitated you moving out of Lakeridge Shores?

13      A.       Because in 2000 I sold -- we sold our restaurant  
14 manufacturing company. And I decided that -- ArrowCreek  
15 was a brand-new development, and so I decided to sell the  
16 home I had -- we had built the home in Lakeridge Shores,  
17 and I decided to sell it, move to ArrowCreek. And I bought  
18 a lot there that I was planning on eventually to build on.  
19 And I bought a home to live in during that time.

20      Q.       With respect to Lakeridge Shores, is that a --  
21 that's a homeowners association --

22      A.       Yes.

23      Q.       -- community association?

24               You're familiar with the rules from Lakeridge  
25 Shores while you were there?

1 A. Yes, absolutely.

2 Q. Did you pay dues while you were there?

3 A. Yes.

4 Q. Would you explain to us how that worked at that  
5 particular property?

6 A. It was a monthly dues for the guard gate and for  
7 snow removal or maintenance. And it was a very pleasant --  
8 it was a pleasant place to live. Lakeridge Shores is very  
9 nice.

10 Q. Did you have monthly dues?

11 A. Yes.

12 Q. How did you pay those?

13 A. Pardon?

14 Q. How did you pay those?

15 A. I'm sorry. I have a cold, and so I'm not hearing  
16 very well.

17 Q. I can speak up.

18 A. If you could speak up a little. My head is  
19 congested.

20 Q. Sure. I'll rephrase it.

21 How did you pay your dues at the Lakeridge  
22 Shores HOA?

23 A. Monthly, on a monthly basis.

24 Q. Did you have an automatic withdrawal or a check?

25 A. No, I mailed it, the check, in every month.

1 Q. Was that a surprise to you that ArrowCreek has  
2 similar HOA dues?

3 A. No. No. Not at all. I moved there because I  
4 liked, you know, an environment where there's a guard gate  
5 and there's CC&Rs.

6 Q. You had mentioned in the previous comments that you  
7 had sold a company. Could you explain to us what that  
8 company was.

9 A. Yes. My husband's father started -- it's called  
10 Toppo Manufacturing. And he started it in 1957. And it  
11 originated the liquor pour spout on top of all the bottles,  
12 and then the condiment dispenser where the cherries and  
13 lemons -- like on Cheers, you would see the condiment  
14 dispenser right there.

15 And the speed racks where the bottles are, order  
16 wheels, paging systems, like 1 through 10 the light would  
17 come on and, you know, to pick up here. The waitress would  
18 know to pick up her food.

19 There's about 300 different products, but  
20 they're all small wares.

21 And so in 1980 we moved it up here because  
22 Nevada's just a great place to live and for a manufacturing  
23 company.

24 And then in 2000 I sold the Toppo -- I sold  
25 Toppo but kept the paging part of the company. So to this

1 day I do the -- like the round coasters when you're waiting  
2 for your table or the waitresses page the chef -- the chef  
3 pages the waitress and they have a pager on their belt  
4 clip.

5 And the number panels, like 1 through 10 or 20,  
6 like Denny's and stuff will have it. And Burger King is  
7 probably my biggest customer. I sell stock level light  
8 systems to the Burger Kings all over the world.

9 Q. When you say you make the pagers or you do the  
10 pagers, what do you mean by that?

11 A. The pagers I buy in resale. But I manufacture the  
12 number panels, the 1 through 10 or 20, that type of --  
13 number panels, that type of stuff.

14 Q. Who does the work?

15 A. Pardon?

16 Q. Who does the work?

17 A. Well, when I sold it in 2000, I sold -- there's a  
18 25-square-foot building. It was large, and we sold all the  
19 equipment. So the -- it's just small now. But I have some  
20 people that work for me that build it. Now the company's  
21 small after that.

22 Q. How many employees do you have?

23 A. Just two and myself. Small.

24 Q. Who does your books?

25 A. I do.

1 Q. How long have you been doing that?

2 A. Well, I started with Toppo when I was 20. I met my  
3 husband when I was only 18. And I was right into Toppo  
4 Manufacturing because his father passed away very early on.

5 My husband is a mechanical engineer, was going  
6 to go to Detroit to build cars, design cars. That's the  
7 love of his life. But his dad died, so his mother asked  
8 him if he would come into Toppo Manufacturing and help him.

9 And then shortly after that his mother died.  
10 And so I have -- was there, you know, since I was 20. And  
11 we grew the company -- it was very small at that time, but  
12 we grew the company together. And then we sold it in 2000.

13 Q. That's the same time you purchased the ArrowCreek  
14 property.

15 A. Correct.

16 Q. Was there a relation with that?

17 A. Yes.

18 Q. You just happened to have the money on hand?

19 A. Well, I sold -- I sold my house in Lakeridge Shores  
20 that we had built, and then I also sold the Toppo  
21 Manufacturing. And I took that cash and put it into a  
22 house where I live right now in ArrowCreek and into the lot  
23 in ArrowCreek.

24 Q. Now, financially speaking, it looks like you were  
25 pretty regular at paying your HOA dues at ArrowCreek for

1 quite sometime, from 2000 --

2 MR. BAYARD: Objection, Your Honor. Lacks  
3 foundation.

4 MR. BOURASSA: I'll rephrase it, Your Honor.

5 THE COURT: Sustained.

6 Rephrase, please.

7 MR. BOURASSA: Sure.

8 BY MR. BOURASSA:

9 Q. After you bought the property at ArrowCreek, did you  
10 pay your HOA dues?

11 A. I used to pay a year at a time on both of them. So  
12 it was -- it was only like 125 a month or so, so -- maybe  
13 it was less than that. But I used to pay -- it was about  
14 2,000 a year, so I just paid the whole thing at a year at a  
15 time so I didn't have to write checks every month.

16 Q. And financially what happened?

17 A. Well, in 2007, it was approximately then, the  
18 economy -- that's when the banks failed, the economy  
19 started. It really affected the restaurant industry.

20 When there's a shortage of money, the one thing  
21 they don't really need is a paging system, they'll just  
22 yell to the chef and the waitress. And so the -- it really  
23 hit the economy and -- for me.

24 And I was married at the time to my husband who  
25 is a structural engineer. And that's the Ellis. And he

1     also -- he had a big company here for 35 years, about 15  
2     employees. And his business just all of a sudden, within a  
3     month, there was no structural -- you know, nobody was  
4     building.

5                 So both of our businesses got hit at the same  
6     time, and we were -- you know, we were without cash and  
7     really struggling.

8     Q.     So how did that impact you with respect to paying  
9     your bills?

10    A.     It was tough. It was tough.

11    Q.     What did you do to manage that?

12    A.     Pardon?

13    Q.     What did you do to manage that? How did you cope  
14    with the hard times?

15    A.     Well, he let go of all -- everybody that worked for  
16    him, started trying to find work in California. Has since  
17    stayed in California. Because -- I mean, he was -- he  
18    built the Nugget, the Peppermill, did the whole retrofit on  
19    the Capitol building. He was very successful here. And  
20    within, I mean, a month, just a couple months, there was  
21    absolutely no work for a structural engineer.

22                 And for myself, I just let people go. And we  
23    just, you know, really cut back. But it was a very tough  
24    time. Still -- we're still trying to get out of it. Still  
25    not -- still not great.



1 Q. So at what point -- I'm sorry. Strike that. At  
2 some point you stopped paying bills. What bills did you  
3 stop paying?

4 A. Well, the HOAs I got -- I stopped paying those. I  
5 got behind because I was trying to pay the mortgage and the  
6 power bills and the utility and everything else, and I did  
7 get behind on the HOAs.

8 Q. What happened as a result of that?

9 A. Well, they sent me a notice, you know, that you're  
10 behind. ATC did. Alessi Trustee Corporation sent me a  
11 notice.

12 Q. And what did you do about that?

13 A. Well, it -- I got a couple notices. And I started  
14 trying to contact them. And this went on for quite a few  
15 months.

16 When I finally got ahold of Alessi himself, it  
17 was -- we had a phone conversation. I said, I need an  
18 accounting to find out, you know, exactly what and how much  
19 I owe, what are the attorneys' fees, what are the -- I knew  
20 approximately how much I owed at the time was approximately  
21 2,000 on each lot, without their fees. So it was around  
22 \$4,000 without their attorneys' fees or without the  
23 additional charges that they added.

24 Q. And so what did you -- I'm sorry. What did Alessi  
25 do next, to your knowledge?

1 A. Well --

2 MR. BAYARD: Objection. Vague, Your Honor. For  
3 both David Alessi as an individual and the Alessi Trustee  
4 Corporation.

5 MR. BOURASSA: Rephrase that again, Your Honor.

6 THE COURT: Go ahead.

7 BY MR. BOURASSA:

8 Q. What did Alessi Trustee Corporation do next?

9 A. Well, finally, after numerous, numerous calls, they  
10 sent me -- they -- we got a payment plan. They sent me a  
11 payment plan.

12 Q. Did Alessi Trustee Corporation ever put a lien on  
13 your property?

14 A. Yes, back in -- it started June 14th, 2007, is the  
15 first lien that they put on my lot and on my house as  
16 Alessi Trustee Corporation.

17 Q. Sure.

18 Mr. Blackburn, would you show her Exhibit 7,  
19 please.

20 Is that on the screen in front of you?

21 A. Yes.

22 Q. Can you see it as a whole document?

23 A. Does it slide?

24 Q. He takes care of that.

25 A. Oh, there we go. Now I see --

1 Q. Mr. Blackburn, like I said, does all the magic with  
2 the computers.

3 A. Okay. Now it's a whole document.

4 Q. Do you see that document?

5 A. Yes.

6 Q. Do you see the date on that document?

7 A. Yes.

8 Q. Are you familiar with that document?

9 A. Yes.

10 Q. What is it?

11 A. Okay. So -- yeah, this is the first -- let me just  
12 see which property. Can you make it bigger? Thank you.  
13 Okay. Now I can see it. Yeah, for the 1200 Broken --  
14 thank you.

15 This is for my home that I live at on 1200  
16 Broken Feather Court.

17 MR. BOURASSA: Your Honor, we would ask that  
18 Plaintiff's Exhibit 7 be admitted.

19 MR. BAYARD: No objection, Your Honor.

20 THE COURT: It's admitted.

21 MR. BOURASSA: Can you show the whole document,  
22 Mr. Blackburn, please?

23 BY MR. BOURASSA:

24 Q. So on this document, I think in the middle of the  
25 screen, it says the 1200 Broken Feather. That's your

1 property; is that right?

2 A. Correct. That's where my home is.

3 Q. Oh, so that's your -- that's the one with your  
4 residence on it?

5 A. Yes.

6 Q. And are you the only owner of record for that  
7 property?

8 A. Yes.

9 Q. And that was in effect also in 2007? You were the  
10 only owner in 2007?

11 A. Yes.

12 Q. And you're the only owner today?

13 A. Correct.

14 Q. Okay. All right. And then down at the bottom there  
15 is a couple of numbers in that last paragraph. Do you see  
16 the \$1,962.58?

17 A. Can you make it a little larger? Thank you.

18 Yes, I do.

19 Q. Do you know how that number was generated?

20 A. No.

21 Q. And then you see the sentence after that indicating  
22 the \$345 in collection or attorneys' fees and \$50  
23 representing collection costs, late fees, service charges  
24 and interest? Do you see that sentence?

25 A. Yes.

1 Q. Do you know what the \$50 was used for?

2 A. No.

3 Q. You don't know what you're being charged for for  
4 that?

5 A. Well, I guess attorneys' fees and \$50 represent  
6 collection costs. Attorneys' fees and 50 represent  
7 collection costs -- I guess service charges and interest.

8 Q. Did you ever ask Alessi Trustee Corporation for an  
9 accounting of this amount?

10 A. Yeah.

11 Q. How it was broken down?

12 A. Yes. Yes. Over and over.

13 Q. And did they ever provide that to you?

14 A. No. Not -- no. I finally got that payment plan  
15 that I would make payments every month. But I never got a  
16 breakdown of exactly the amount and what I totally owed.

17 But I know for myself that the amounts that I  
18 didn't pay were around 2,000 for the lot, around 2,000 for  
19 the house, without their collection, attorneys' fees, or  
20 interest.

21 MR. BOURASSA: All right. Let's take that off  
22 the screen, please.

23 Could you please show Ms. Ellis the next page of  
24 Exhibit 7.

25

1 BY MR. BOURASSA:

2 Q. In 2007, Ms. Ellis, do you recall approximately how  
3 much your monthly homeowners association dues were?

4 A. I don't remember exactly.

5 Q. Was it --

6 A. 125 maybe. 165. I'm not quite sure back then.

7 Q. Less than 200?

8 A. Yes, definitely.

9 Q. All right. There's another document on the screen.  
10 It's the second page of Exhibit 7.

11 Do you recognize that document?

12 A. Yes.

13 Q. And do you see down at the bottom the 00053? Do you  
14 see that number?

15 A. Yes, I do.

16 Q. Just so you know, that's the number that we stamped  
17 on the page when we produce it to Alessi. So this is a  
18 document you gave to me.

19 A. Okay.

20 Q. But you do recognize that document?

21 A. Yes.

22 MR. BOURASSA: Your Honor, we would like to  
23 admit the second page of that document as just Exhibit 7 as  
24 well.

25 MR. BAYARD: No objection, Your Honor.

1 THE COURT: Pardon?

2 MR. BAYARD: No objection, Your Honor.

3 THE COURT: It's admitted.

4 So, Madam Clerk, is this all Exhibit 7 or two  
5 pages?

6 COURTROOM ADMINISTRATOR: Well, I need  
7 clarification from counsel.

8 MR. BOURASSA: Yeah, I'd prefer to admit it all  
9 as Exhibit 7. It occurred to me as I was turning the page  
10 that it wasn't separated.

11 THE COURT: We'll treat it all as Exhibit 7.  
12 But be cautious about this in the future.

13 MR. BOURASSA: I just didn't want to put the  
14 cart out there and then get it run over by a bus.

15 COURTROOM ADMINISTRATOR: So is the entire  
16 document entered?

17 THE COURT: Yes.

18 COURTROOM ADMINISTRATOR: Okay.

19 (Plaintiff's Exhibit No. 7 received into  
20 evidence.)

21 MR. BOURASSA: Just in terms of housekeeping.  
22 Thank you, Your Honor.

23 COURTROOM ADMINISTRATOR: Thank you.

24 MR. BOURASSA: All right. Could we go ahead and  
25 expand that. And can you scroll all the way to the bottom.

1 BY MR. BOURASSA:

2 Q. Do you see the date on this particular document?

3 A. Yes, I do.

4 Q. What's the date above the signature line there?

5 A. July 9th, 2007.

6 Q. Okay. And if we scroll back up, the property  
7 address, I think you can see on that document.

8 You went a little too far there, Mr. Blackburn.

9 A. Yes, the 1200 Broken Feather.

10 Q. That's the same property that we were talking about  
11 immediately preceding, the page we were looking at before,  
12 right?

13 A. Right.

14 Q. That's still your primary residence?

15 A. Yes, that's where my home is.

16 Q. All right. And if we scroll up just a little bit  
17 more, do you see the amount due on this particular  
18 document?

19 A. Amount due is \$3,000.63.

20 Q. Now, let's back out of this page, and let's put it  
21 side by side with the first page of Exhibit 7.

22 Now, with respect to the 3,000.63 on page 2, did  
23 you ask Alessi for an accounting of that?

24 A. Yes.

25 Q. Did they provide one to you?



1 A. No.

2 Q. And then the date of the two documents -- on the  
3 first page it looks like it's June 1, 2007?

4 A. Correct.

5 Q. And the second page is July 9, 2007?

6 A. Correct.

7 Q. Did you pay your homeowners association dues for the  
8 month of June in 2007?

9 A. No, I don't think so. I think that's when I was  
10 late.

11 Q. So it would be fair -- we'd agree that you probably  
12 would owe another 125 or \$150, maybe a late fee for that,  
13 right?

14 A. Yeah. It was about 125 back then, I think.

15 Q. Do you have any understanding of what the difference  
16 is for the additional \$800 in charges between June 1 and  
17 July 9?

18 A. No, I don't.

19 Q. Did Alessi ever provide that to you?

20 A. No. Absolutely not.

21 Q. And just so you understand it, I'm going through one  
22 property at a time. I don't want to confuse this more than  
23 it has to. So we're just going to talk about the Broken  
24 Feather property first, and then we'll talk about the  
25 second property.

1 A. Okay.

2 Q. All right. Could we show the witness Exhibit 5,  
3 please, Plaintiff's Exhibit 5.

4 Do you see that document?

5 A. Yes, I do.

6 Q. With respect to these documents, do you have an  
7 understanding what it means when the stamp is up in the top  
8 right-hand corner?

9 A. Yes. It's recorded on my property.

10 Q. What does that mean to you?

11 A. It's a lien.

12 Q. All right. So looking at this document, do you  
13 recognize it?

14 A. Yes.

15 Q. Okay. How do you recognize it?

16 A. Because I've seen it before.

17 Q. It was provided to you in conjunction with your  
18 ownership of the property?

19 A. Yes.

20 MR. BOURASSA: Your Honor, we would ask that --  
21 well, there's a second page, but it doesn't seem to really  
22 matter. We'd ask that that be admitted, Exhibit 5.

23 THE COURT: Are you offering both pages or just  
24 the one?

25 MR. BOURASSA: Both pages, Your Honor. If you

1 would like to take a look at the second page, I'd certainly  
2 be happy to go through that with her.

3 THE COURT: Please do.

4 MR. BOURASSA: It's the notary page.

5 THE COURT: All right.

6 Any objection?

7 MR. BAYARD: No, Your Honor.

8 THE COURT: It's admitted, both pages.

9 MR. BOURASSA: Thank you, Your Honor.

10 (Plaintiff's Exhibit 5 received into  
11 evidence.)

12 BY MR. BOURASSA:

13 Q. Now, do you see the date of Exhibit 5 down at the  
14 bottom?

15 A. Yes, February 3rd, 2008.

16 Q. Okay.

17 A. Is that 2008? Yeah. Yes.

18 Q. And let's see. This applies -- like it says -- he's  
19 already got it blown up right there -- applies to the lien  
20 dated 6/14/2007.

21 That's the date you mentioned, correct?

22 A. Yes.

23 Q. And that was Exhibit 7, the first page.

24 Now, how much is due on this particular lien  
25 document?

1 A. Now it's \$4,409.39.

2 Q. Did you ask Alessi for an accounting of how they  
3 came up with that number?

4 A. Yes, I did.

5 Q. Did they provide you with one?

6 A. No, not at all.

7 Q. All right. Let's take that off the screen. And  
8 we'll pull up Exhibit 9.

9 Now, with respect to Exhibit 9, do you recognize  
10 that document?

11 A. Yes.

12 Q. How do you recognize that document?

13 A. It's a letter that they sent to me. I can't see the  
14 date. Can you make it a little larger? Thank you. April  
15 16th, 2008. Okay.

16 Q. Okay. Do you see the phrase at the top, A Division  
17 of the Law Offices of Alessi & Koenig?

18 A. Yes, I do.

19 Q. And then the date on this particular document there  
20 in the matrix caption? What date's this --

21 A. April 16th, 2008.

22 Q. All right. Let's scroll down.

23 If you go ahead and take a look at this  
24 document, do you see the total amount due down there at the  
25 bottom?

1 A. Yes, I do.

2 Q. And how much is that?

3 A. \$8,948.33.

4 Q. Now, you just became delinquent on this in 2007; is  
5 that right?

6 A. Correct.

7 Q. And your homeowners association dues were, what, 125  
8 a month, plus or minus, call it --

9 A. Right.

10 Q. -- 150 to be safe?

11 Can you tell me approximately how many months  
12 you would estimate that you were behind in homeowners  
13 association dues on the 1200 Broken Feather Court property  
14 as of October 30, 2008?

15 A. I'm not sure exactly. Well, it would have been June  
16 2007 to October of 2008.

17 MR. BOURASSA: While you're working on that,  
18 Your Honor, we would just move to admit this document.

19 THE COURT: Any objection?

20 MR. BAYARD: None, Your Honor. Are we admitting  
21 both pages?

22 THE COURT: It's admitted.

23 MR. BOURASSA: Yes. The second page is just a  
24 signature block.

25 THE COURT: It's admitted as to both pages.

1 (Plaintiff's Exhibit 9 received into  
2 evidence.)

3 MR. BOURASSA: Thank you, Your Honor.

4 So go back to that first page, Mr. Blackburn.

5 BY MR. BOURASSA:

6 Q. So I'm looking at the bottom of this letter, and I  
7 see \$239.24 as the calculation Alessi has for your monthly  
8 assessment as of October 30, 2008.

9 Do you see that?

10 A. Yeah. That would have to be both the house and the  
11 lot.

12 Q. So they're combining two bills on one here?

13 A. Yes.

14 Q. That's not what the letter says, though, is it?

15 A. No, it doesn't. But it has to be both.

16 Q. I just did the real easy math. It doesn't come out  
17 even. It looks like line 4 there, Assessments Through  
18 October 30 -- actually, do you have an understanding of why  
19 the letter is dated April 18, 2008, and they're charging  
20 you for assessments through October 30, 2008?

21 A. Yeah, they're adding six additional months. They  
22 want me to pay ahead of time for six more months.

23 Q. Why is that?

24 A. I don't know. But the association dues now are only  
25 220 a month per lot. So they were around a hundred back

1       then. That's what they are now per lot.

2       Q.       So does this letter accurately --

3       A.       Seven years ago.

4       Q.       Sorry. Does this letter accurately reflect what you  
5       owed on the 1200 Broken Feather Court property as of April  
6       18, 2008?

7       A.       No, not at all.

8       Q.       Does it accurately reflect the assessments due even  
9       through October 30, 2008?

10      A.       No.

11      Q.       If you scroll up and you look at those charges, the  
12      notice of intent to lien, notice of default, do you have an  
13      understanding what those charges reflect or relate to?

14      A.       They're -- just what they're saying. I mean,  
15      attorneys' fees. They're charges to lien the property.

16      Q.       Okay.

17      A.       Payment plan letter.

18      Q.       So your testimony that this letter is inaccurate  
19      with respect to the amounts that you owed at that point in  
20      time on that property?

21      A.       Definitely.

22      Q.       All right. Let's look at Exhibit 9, please.

23      Actually, I'm sorry. Strike that. Let's go back and stay  
24      with Exhibit -- what was that? That was Exhibit 9. I'm  
25      sorry.

1                   When you look at this letter, does it have the  
2 statement that states that Alessi Trustee Corporation is a  
3 debt collector?

4       A.       No, it does not.

5       Q.       Does it have a statement that Alessi Trustee  
6 Corporation, in sending you the letter, is attempting to  
7 collect the debt?

8       A.       No, it does not.

9       Q.       Does it have a statement that any information  
10 obtained by Alessi Trustee Corporation will be used for the  
11 purpose of debt collector?

12      A.       No, it does not.

13      Q.       Does it instruct you in any manner on how you should  
14 dispute the charges that are contained within this  
15 document?

16      A.       No, it does not.

17      Q.       Would it be fair to say that this is asking for at  
18 least twice what you think you owe at that point in time?

19      A.       Yes. More than twice. Three times. Yeah.

20      Q.       Let's look at Exhibit 3.

21                   MR. BAYARD: I'm sorry, which exhibit?

22                   MR. BOURASSA: Exhibit 3. I'm going  
23 chronologically just so -- I'm doing the best I can with  
24 what I've got here.

25



1 BY MR. BOURASSA:

2 Q. All right. Have you seen Exhibit 3 before?

3 A. Yes.

4 Q. What is Exhibit 3, in your understanding?

5 A. Just a minute. I've got two on my screen.

6 Q. They're the same page. Exhibit 3 is going to be  
7 three pages long.

8 A. Oh, it's a couple pages? Okay. Okay.

9 So is this -- which address is this? Okay. So  
10 this is my lot at Flowering Sage.

11 Q. Oh, you know what, I'm sorry. I've got up the wrong  
12 column. We'll come back to that one.

13 Let's look at Exhibit 12, please.

14 Do you recognize Exhibit 12?

15 A. Yes.

16 Q. And which property is that exhibit related to?

17 A. The 1200 Broken Feather Court.

18 Q. And you're familiar with this because you've seen  
19 it?

20 A. Yes, correct.

21 Q. The exhibit that we have is two pages, but they're  
22 identical. So just move to admit the first page of that  
23 exhibit as --

24 THE COURT: Mr. Bayard?

25 MR. BOURASSA: -- Exhibit 12.

1 MR. BAYARD: No objection, Your Honor.

2 THE COURT: It's admitted.

3 (Plaintiff's Exhibit 12, page 1 received into  
4 evidence.)

5 BY MR. BOURASSA:

6 Q. So what's the date on this document, up at the top,  
7 Exhibit 12?

8 A. May 23rd, 2008, I think. Did I see that? Yeah.  
9 2008.

10 Q. And on this particular document, what is the amount  
11 due?

12 A. I have to go -- scroll up a little.

13 MR. BOURASSA: Mr. Blackburn, if you would  
14 scroll all the way to the bottom, please.

15 THE WITNESS: I can't see the bottom of it.  
16 \$6,472.27.

17 BY MR. BOURASSA:

18 Q. And it says there's a payment received here. Do you  
19 see how much that is?

20 A. Yes.

21 Q. How much is the payment?

22 A. \$1,491.39.

23 Q. Is that a payment you made?

24 A. Yes.

25 Q. I think we'll be talking a little bit more about

1 that payment as we get further along.

2 But so as of May 23rd, 2008, you were attempting  
3 to make payments on these accounts?

4 A. Correct. By their payment plan.

5 Q. All right. Let's look at -- oh, I'm sorry, this  
6 whole FDCPA thing.

7 Does this particular letter, in your reading it,  
8 have any statements regarding that this letter is an  
9 attempt to collect a debt?

10 A. No, it does not.

11 Q. Does this letter have any statements with respect to  
12 whether or not this is a communication from a debt  
13 collector?

14 A. No, it does not.

15 Q. Does this letter have any statements with respect to  
16 any information Alessi Trustee Corporation may receive will  
17 be used for the purposes of collecting a debt?

18 A. No, it does not.

19 Q. Despite the application of your \$1,491.39 payment on  
20 this file -- on this particular letter, does this letter  
21 accurately reflect the amount of past due homeowner  
22 association dues that you had or owed, in your estimation,  
23 as of May 23rd, 2008, the date of the letter?

24 A. No, it does --

25 MR. BAYARD: Objection. Lacks foundation.

1 THE WITNESS: No, it does not.

2 THE COURT: Wait. We have an objection. I'm  
3 going to overrule it. I think the question was  
4 sufficiently clear.

5 BY MR. BOURASSA:

6 Q. Just to be clear, you don't believe that this letter  
7 accurately reflects the amount of past due association dues  
8 for the 1200 Broken Feather property; is that right?

9 A. No, it does -- it's not accurate. That amount is  
10 not accurate.

11 Q. Too high or too low?

12 A. Too high.

13 Q. Why do you say that?

14 A. Because at the time -- well, you don't have the  
15 payment plan. But I owed approximately \$4,000, \$2,000 on  
16 each one, of which I made payments.

17 I might be jumping ahead of myself, so --

18 Q. But that's the basis for your belief that this is  
19 not accurate with respect to 1200 --

20 A. Correct.

21 Q. -- Broken Feather?

22 A. It's not accurate.

23 MR. BOURASSA: Your Honor, I don't know if now  
24 would be an appropriate time for our afternoon break.

25 THE COURT: I'll take the clue. Let's take an

1       afternoon break at this time.

2               Ladies and gentlemen, we'll break for 15  
3 minutes. I notice that clock's a little bit fast. But by  
4 that clock we'll reconvene at 3:15, or when everyone is  
5 ready.

6               I want to caution you, of course, not to discuss  
7 the case in any way or permit anyone to discuss it in your  
8 presence.

9               And we'll take our break. You may go ahead and  
10 step down.

11              (Recess from 2:57 p.m. until 3:20 p.m.)

12              (Outside the presence of the jury.)

13              THE COURT: Let's bring the jury in, please.

14              COURTROOM ADMINISTRATOR: Yes, Your Honor.

15              (Jurors enter courtroom at 3:20 p.m.)

16              THE COURT: Have a seat, please.

17              The record will show that we are reconvened in  
18 open court. The jury is all present, as are counsel and  
19 the parties.

20              Go ahead, please, with your examination of  
21 Ms. Ellis.

22              MR. BOURASSA: Thank you, Your Honor.

23              Mr. Blackburn, could you please show Ms. Ellis  
24 Exhibit 10.

25

1 BY MR. BOURASSA:

2 Q. Ms. Ellis, are you familiar with this document?

3 A. Yes, I am.

4 Q. What is it?

5 A. This is -- let me look at this just a second, make  
6 sure this is the one I'm thinking.

7 Yeah, this is the payment plan that the Alessi  
8 Trustee set up for me.

9 Q. Okay.

10 MR. BOURASSA: Let's go ahead and move that  
11 Exhibit 10 into evidence, please.

12 THE COURT: Any objection?

13 MR. BAYARD: No objection, Your Honor.

14 THE COURT: It's admitted.

15 (Plaintiff's Exhibit 10 received into  
16 evidence.)

17 MR. BOURASSA: Thank you, Your Honor.

18 BY MR. BOURASSA:

19 Q. Could you explain to me how you came to try to reach  
20 a payment plan with the Alessi Trustee Corporation?

21 A. Well, I sent them numerous letters asking them to  
22 please give me an accounting, an accurate accounting of  
23 what I owe and what are the fees, attorneys' fees and  
24 everything.

25 I never received that from them. But I did

1 finally get this payment plan. And they came up with this  
2 number.

3 Q. So they proposed this payment plan to you, without  
4 providing you any of the backup?

5 A. Yes, correct.

6 Q. Did you have an understanding of what would happen  
7 if you did not agree to that payment plan or make those  
8 payments?

9 A. Yeah, they would sell my house and my lot.

10 Q. Okay. And I notice the first payment on the payment  
11 plan is \$1,491.39; is that right?

12 A. Yes.

13 Q. And I believe we just finished talking about Exhibit  
14 12, where you made a payment of \$1,491.39. Do you recall  
15 that?

16 A. Yes.

17 Q. So you were abiding by the payment plan at that  
18 time?

19 A. Yes.

20 Q. Then what happened?

21 A. Well, I made a payment on -- do you have a copy of  
22 the check?

23 Q. Sure.

24 A. The date, exact date?

25 Q. Let's go ahead and put up on the screen the first

1 check.

2 Do you have that on your screen?

3 A. Yes.

4 Q. Can you tell me what you're seeing on your screen?

5 A. Okay. There we go. Yeah.

6 So the first payment was due on May 30th --

7 Q. Just a second. I want to make sure the jury can see  
8 it. So this is your check, right?

9 A. Correct.

10 COURTROOM ADMINISTRATOR: The jury can't see it.

11 MR. BOURASSA: Right. That's why I'm stopping  
12 her, getting the thing authenticated.

13 We'd move to admit this copy of the check dated  
14 May 13, 2008, as Exhibit 56.

15 THE COURT: Exhibit what?

16 MR. BOURASSA: 56, Judge.

17 THE COURT: All right.

18 Any objection?

19 MR. BAYARD: I don't have a copy of this actual  
20 exhibit, Your Honor. But it appears to be what it purports  
21 to be.

22 THE COURT: All right. I'll admit it and  
23 reserve any right to raise a later objection.

24 MR. BOURASSA: Thank you, Your Honor.

25



1 (Plaintiff's Exhibit 56 received into  
2 evidence.)

3 MR. BOURASSA: So that's not shown to the jury,  
4 Ms. Clerk?

5 THE COURT: Yes.

6 COURTROOM ADMINISTRATOR: Yes.

7 MR. BOURASSA: Thank you.

8 BY MR. BOURASSA:

9 Q. So could you explain to me -- you've got some  
10 specifications on this check down at the bottom with the  
11 description. The 1200 Broken Feather --

12 A. Yes, this payment is just for my home, 1200 Broken  
13 Feather Court, lot 210.

14 Q. Was it your practice to designate the payment for  
15 your HOA dues, or whatever payment you were making, to one  
16 house or the other or both?

17 A. Yes. I would always put it on the check and send in  
18 the coupons that go with the payment to show where the  
19 payment's going to.

20 Q. Okay.

21 A. Since I have two properties, a lot and a house.

22 Q. Why did you do that?

23 A. So that the accounting would stay clear.

24 Q. All right. So you made this payment.

25 We have now the shot of the back of that check.

1 I'm sorry. Take that down, please. Go ahead and give me  
2 the next screen.

3 All right. There's a document on the back of  
4 your check. Do you see what that says?

5 A. Yes. That was --

6 Q. All right. What -- can you tell me what's on your  
7 screen?

8 A. They received the check, and Alessi Trustee  
9 Corporation cashed it and put in it their bank, Wells Fargo  
10 Bank.

11 Q. Okay.

12 MR. BOURASSA: I would go ahead and move to  
13 admit this as the next exhibit. It would be 57.

14 MR. BAYARD: No objection, Your Honor, subject  
15 to the same fact that we don't have -- defense does not  
16 have a copy of this document.

17 THE COURT: Okay. It's admitted. And the same  
18 reservation is provided.

19 MR. BOURASSA: Thank you.

20 (Plaintiff's Exhibit 57 received into  
21 evidence.)

22 MR. BOURASSA: Could you put 56 and 57 up  
23 together, please.

24 BY MR. BOURASSA:

25 Q. Do you agree that's the front and back of the same

1 check --

2 A. Yes.

3 Q. -- Ms. Ellis?

4 Your check is payable to ArrowCreek Homeowners  
5 Association, right?

6 A. Correct.

7 Q. And then you made a comment about it being deposited  
8 by Alessi Trustee Corporation?

9 A. Yes. There's a letter that went with this check  
10 that --

11 Q. We're going to get --

12 A. -- when I hand-delivered it to ArrowCreek it  
13 stated --

14 Q. We're going --

15 A. -- what the check was for.

16 Q. We're going to get to that next. So let's go ahead  
17 and show you that letter. Show the letter in full, please.

18 And do you see that letter on your screen?

19 A. Yes.

20 Q. Is that the letter that you're referring to that  
21 accompanied that check?

22 A. Correct. And they received -- I hand-delivered it  
23 to ArrowCreek -- I'm sorry, Associated Management. And  
24 they stamped it on May 13th, 2008, they received that --

25 Q. Slow down. Slow down.

1 A. Yeah.

2 Q. Let's go ahead and get it in front of the jury.

3 A. Okay. Sorry.

4 Q. They'd like to see the pictures, too.

5 A. Sorry. I'm just reading the screen.

6 Q. So this is a letter that you sent with a copy of the  
7 check.

8 MR. BOURASSA: Your Honor, we would move that in  
9 as Exhibit 58.

10 MR. BAYARD: No objection, Your Honor.

11 THE COURT: It's admitted.

12 (Plaintiff's Exhibit 58 received into  
13 evidence.)

14 BY MR. BOURASSA:

15 Q. All right. Now, explain to me what was going on,  
16 why are you hand-delivering this correspondence to the  
17 management company?

18 A. Because the first payment, per the payment schedule,  
19 is due on the 30th of May, or they would sell the house.

20 So I made this payment, I think it's 17 days  
21 ahead of time. I have to get my math right. But I made it  
22 on May 13th, hand-delivered it to them, so they have their  
23 first payment.

24 Q. Okay. So at that time did you think you had a  
25 payment arrangement in place with Alessi Trustee

1 Corporation?

2 A. Yes. I did not agree with their payment schedule,  
3 because the amounts were more than I owed, but I -- so  
4 that's why I put it's disputed. But I didn't want to lose  
5 my house, so I started making the -- I made the payment  
6 they wanted.

7 Q. Okay. And what happened after that?

8 A. Well, they -- the payment was due on the 30th, but  
9 on the 28th they had a -- they were going to sell my house.  
10 They have a -- they have a notice in the paper that on  
11 May 28th there's a sale and it was going to the court steps  
12 two days before even the first payment that I made.

13 Q. How did you find out about that?

14 A. They sent me a notice. I have notices. And it was  
15 in the newspaper.

16 Q. I'm looking at Exhibit 4.

17 Could we put up Exhibit 4, please.

18 Do you recognize Exhibit 4?

19 A. Yes.

20 Q. What is it?

21 A. Notice of Trustee's Sale.

22 Q. That's the newspaper article you're talking about?

23 A. Yes.

24 MR. BOURASSA: Move that into evidence as  
25 Plaintiff's Exhibit No. 4, Your Honor.

1 MR. BAYARD: No objection, Your Honor.

2 THE COURT: It's admitted.

3 (Plaintiff's Exhibit 4 received into  
4 evidence.)

5 MR. BOURASSA: And I apologize about the  
6 terrible copy. You know how that happens with newspaper  
7 publications. But we can blow it up one paragraph at a  
8 time.

9 BY MR. BOURASSA:

10 Q. So approximately what was the timeframe of having  
11 the -- I'm sorry. Strike that. I already lost myself just  
12 a tiny bit.

13 What was the timeframe of having the agreement  
14 in place relative to this publication in the newspaper?

15 A. Well, I got the agreement just a few weeks before I  
16 made that -- a payment. But they had -- and then they -- I  
17 don't know the exact timeframe at this moment. I cannot  
18 remember. I just know that they had it scheduled and was  
19 continuing with the sale of the house two days before the  
20 first payment that they -- that I made and they cashed it,  
21 but they were still going and selling the house anyways.

22 Q. What did you do at that point?

23 A. I had to get an attorney to stop, emergency -- I  
24 forget the name of it, it's called.

25 Q. An injunction?

1       A.       An injunction to stop the sale of the house.

2               THE COURT:   Mr. Bourassa, I think you need to  
3 highlight the remaining portions of the notice to show --

4               MR. BOURASSA:   Certainly, Your Honor.

5               THE COURT:   -- in order to identify the  
6 property.

7               MR. BOURASSA:   Sure.   Mr. Blackburn, would you  
8 scroll down, please.

9 BY MR. BOURASSA:

10       Q.       And you can see there at that, the last address on  
11 the screen, that's -- and, again, I apologize for the  
12 copies, but 1200 Broken Feather Court.   That's your  
13 residence, correct?

14       A.       Yes.   And on -- up here on May 28th -- oops, it's  
15 moving now.   On May 28th, the Alessi Trustee Corporation,  
16 as duly appointed trustees -- that they are selling it on  
17 May 28th at the court steps.

18       Q.       Okay.   So it was your understanding that despite you  
19 entering into an agreement, they were going to sell your  
20 property?

21       A.       Yes, absolutely.

22       Q.       What attorney did you hire?

23       A.       Pardon?

24       Q.       What attorney did you hire to file an injunction?

25       A.       Curtis Coulter.

1 Q. Mr. Coulter assisted you in this case to some degree  
2 before you retained me; is that right?

3 A. Yes, he did.

4 Q. So what was the outcome of your attempt to obtain an  
5 injunction preventing this sale?

6 A. Yeah, there was a stop on the sale. Because it was  
7 going through. So Curtis Coulter was able to get an  
8 emergency injunction, go in front of a judge and order the  
9 sale of my property be stopped at that time.

10 Q. Okay. Did you have any contact with Alessi with --  
11 you personally have any contact with Alessi, with respect  
12 to this notice, this sale?

13 A. No, just the letters that I was sending to him,  
14 numerous letters before this, trying to get a payment --  
15 trying to get the exact amount that was owed that they were  
16 saying I owed.

17 And verbally I did speak to him once on the  
18 phone, but it was very short, trying to get a payment plan.

19 Q. All right. Let's go ahead and take that down.

20 Now, let's skip ahead. We'll talk about Exhibit  
21 29. Before we get to that, did you make any more payments  
22 on that payment plan or just the one?

23 A. No, the next month I made another payment of the  
24 1491.27, I think it is.

25 Q. Okay. I think we have a copy of that check.



1 Do you recognize that check?

2 A. Yes, I do.

3 MR. BOURASSA: Okay. Let's go ahead and move  
4 that into evidence as Exhibit 60.

5 COURTROOM ADMINISTRATOR: Are you just talking  
6 about 29?

7 MR. BOURASSA: I skipped back.

8 COURTROOM ADMINISTRATOR: Oh, sorry. So what --  
9 it should be 59.

10 MR. BOURASSA: Oh, did I not do 59?

11 MR. RICHARDS: No, this would be Exhibit 59.  
12 And this actually comes from Defendant's 503. It's kind of  
13 halfway in the stack.

14 THE WITNESS: May I say something?

15 THE COURT: Well, let's resolve it first.  
16 Are you offering it at this time?

17 MR. BOURASSA: Yes, Your Honor.

18 THE COURT: Any objection?

19 MR. BAYARD: What's the exhibit number, Your  
20 Honor?

21 MR. BOURASSA: It's going to be 59. It's a  
22 document out of your production.

23 MR. BAYARD: With the other checks or a separate  
24 exhibit?

25 MR. BOURASSA: Separate exhibit.

1 MR. BAYARD: No objection, Your Honor.

2 THE COURT: It's admitted.

3 (Plaintiff's Exhibit 59 received into  
4 evidence.)

5 BY MR. BOURASSA:

6 Q. You were going to say something.

7 A. Yeah. Could you enlarge it?

8 Q. Absolutely.

9 A. Because I hand-delivered this check, also. And the  
10 receiving date is right there.

11 Q. Down at the bottom?

12 A. No, that's not correct. Well, they got it on the  
13 24th. But I can barely see that. I guess the -- that's  
14 weird. But I hand-delivered that check to them, also.

15 Q. Okay. So that's your second payment on --

16 A. Yes.

17 Q. -- the payment plan that you were talking about?

18 A. Correct.

19 Q. Is that while your injunction was pending, or your  
20 injunction had already been granted?

21 A. Correct. And the other side of that check would  
22 show that Alessi cashed this check, too, Alessi Trustee  
23 Corporation. It went into their bank account at Wells  
24 Fargo.

25 Q. Once the injunction was granted, what did you do?

1       A.       Well, I had made two payments at this point. Both  
2 checks did not go to ArrowCreek. They were cashed by  
3 Alessi Trustee Corporation.

4               So Curtis Coulter, my attorney at that time,  
5 said that they're not supposed to be doing that and stop  
6 making any more payments because you're not getting  
7 credited. This is \$3,000 at this point, and it's not going  
8 towards my HOA dues.

9       Q.       Okay. Let's look at Exhibit 18. Exhibit 18 is  
10 three pages.

11              Do you recognize that document?

12       A.       Yes, I do.

13       Q.       What is it?

14       A.       This is -- just a minute. It's moving. Okay. On  
15 March -- yes, this -- let me read it. Just a second.

16              Yes, this is an e-mail to Aileen Ruiz, their  
17 secretary, from -- just a second. Let me double check.  
18 Yeah, melindaellis@sbcglobal. I e-mailed her trying to  
19 find out what's going on with my payments because --

20       Q.       I'll stop you right there.

21       A.       Okay.

22       Q.       So you recognize the document?

23       A.       Yes.

24       Q.       It's an e-mail between you and Alessi -- an Alessi &  
25 Koenig employee; is that right?

1       A.       Yes.

2               MR. BOURASSA: And we'd go ahead and move that  
3 into evidence as Plaintiff's 18.

4               MR. BAYARD: Objection, Your Honor, on the  
5 grounds of relevance. This is an e-mail dated March 13th,  
6 2013, years after the sequence of events that we're talking  
7 about.

8               MR. BOURASSA: And it substantiates what the  
9 witness testified to with respect to allocation of the  
10 \$1400 payments, Your Honor.

11              THE COURT: All right. Well, it's premature at  
12 this time because it's referring to events that occurred  
13 after 2008. Assuming that you can establish the foundation  
14 on those other events, I'll admit the exhibit.

15              MR. BOURASSA: As a point of clarification, Your  
16 Honor, since it's only on your screen, if I could have  
17 Mr. Blackburn highlight the 7/21/2008 entry below in the  
18 response from the Alessi employee. That clarifies Alessi's  
19 response as to how they allocated funds.

20              MR. BAYARD: Your Honor, also objection on  
21 hearsay grounds. The testimony is that the person who sent  
22 the e-mail is a secretary. She's not an officer or  
23 director or member of either of the defendants, so  
24 therefore it's not admissible as a statement of a party  
25 opponent. So it's inadmissible hearsay.

1 THE COURT: All right. I'm going to reserve  
2 ruling on it. I need to take a closer look at it myself.

3 MR. BOURASSA: Certainly, Your Honor.

4 BY MR. BOURASSA:

5 Q. So, Ms. Ellis, the reason that you stopped payment  
6 was what, exactly?

7 A. Because the payments were not going to offset my  
8 HOAs that I was behind, they were going to the collection  
9 agency or law office, whatever they were, as Alessi Trustee  
10 Corporation.

11 Q. And so when we go back and we look at Exhibit 12,  
12 and we see that 1491.39 down at the bottom, it's your  
13 understanding that that payment of 1491.39 was not applied  
14 to your past due balance with ArrowCreek?

15 A. Correct. It was not.

16 Q. What do you understand was done with that money?

17 A. That Alessi Trustee Corporation, that went to them.

18 Q. So that didn't reduce your balance with the  
19 association?

20 A. No, not at all. Neither did the next payment.

21 Q. All right. Now we can move on to 29.

22 Do you recognize this document?

23 A. Yes, I do.

24 Q. What is it?

25 A. This is another lien on the property, now from

1 Alessi & Koenig.

2 MR. BOURASSA: All right. Let's go ahead and  
3 enter that as Plaintiff's 29. It's two pages. Second page  
4 is a notary page, Your Honor. We would move that into  
5 evidence.

6 MR. BAYARD: No objection, Your Honor.

7 THE COURT: It's admitted.

8 (Plaintiff's Exhibit 29 received into  
9 evidence.)

10 BY MR. BOURASSA:

11 Q. So what's the date on this document?

12 A. November 19th, 2008.

13 Q. I think that's the recording date. I think the date  
14 at the bottom was the date I was referring to. But it's  
15 the 18th. I don't think it's of any consequence.

16 A. Yeah, November 18th.

17 Q. What property is this applied to?

18 A. 1200 Broken Feather.

19 Q. All right.

20 A. My house.

21 Q. What is the amount of this lien?

22 A. Now it's 7,200 -- no, \$7,021.28.

23 Q. Do you have an understanding as to how that amount  
24 is calculated?

25 A. No, I don't.

1 Q. And just harkening back to Exhibit 12, in Exhibit  
2 12, they had you owing \$6,472.27. Do you know what the  
3 difference was there? Do you know why there's a difference  
4 in charges?

5 A. Well, less the one payment that I made, that they're  
6 showing that I made on -- in May, of the 1491.39.

7 Q. Right. Do you know what amounts for the increase in  
8 the lien amount from the May 23rd, 2008, letter that they  
9 sent you to the November 18, 2008, lien that they filed?

10 A. No, I don't.

11 Q. Did you ever receive an explanation as to why the  
12 collection entity changed from Alessi Trustee Corporation  
13 to Alessi & Koenig?

14 MR. BAYARD: Objection. Calls for hearsay.

15 MR. BOURASSA: The question was only if she ever  
16 received any information.

17 THE COURT: Well, lay some greater foundation,  
18 from whom.

19 MR. BOURASSA: Certainly.

20 BY MR. BOURASSA:

21 Q. From your association or from Alessi, did anyone  
22 ever explain to you the transition from someone different  
23 handling your account?

24 A. No, not at all.

25 Q. Did you attempt to contact Alessi & Koenig with

1       respect to this particular lien?

2       A.       Well, my attorney would have at this point because I  
3       had an attorney.

4       Q.       All right. Let's move to Exhibit 25.

5               Do you recognize that document?

6       A.       Yes.

7       Q.       What is that document?

8       A.       Well, it's -- can you make it smaller so we can see  
9       the top, please.

10              Okay. So the Notice of Delinquent Assessment  
11       Lien.

12              MR. BOURASSA: Okay. I'd like to move that into  
13       evidence as Exhibit 25.

14              MR. BAYARD: No objection, Your Honor.

15              THE COURT: It's admitted.

16              (Plaintiff's Exhibit 25 received into  
17       evidence.)

18       BY MR. BOURASSA:

19       Q.       What's the date at the bottom of this particular  
20       lien?

21       A.       November 20th, 2008.

22       Q.       Let's put that -- the amount due on that is how  
23       much?

24       A.       Now it's \$10,491.07.

25       Q.       And how much represents collection costs, according



1 to this document?

2 A. \$5,685 represent collection.

3 Q. And then --

4 A. And attorneys' fees.

5 Q. Then there's another \$50 charge for other issues,  
6 right?

7 A. Right.

8 Q. And 1200 Broken Feather, that's still your property,  
9 your home, right?

10 A. Yes.

11 Q. Okay. That's the mailing address I just -- right  
12 above that is the Broken Feather issue.

13 Let's go ahead and put that side by side with  
14 Exhibit 29.

15 And I call your attention to the dates. If you  
16 could see that the Exhibit 29 on the right-hand side of the  
17 screen is November 18, 2008. Is that right?

18 A. Right.

19 Q. And as we recall up at the top, it was recorded on  
20 November 19, 2008?

21 A. Right.

22 Q. And then looking at Exhibit 25 right next door on  
23 the left, we see that the date of that is November 20th?

24 A. Correct.

25 Q. And that it was recorded, I think, four days later,

1 on November 24th?

2 Mr. Blackburn, if you would scroll to the top of  
3 that exhibit.

4 A. Yeah, November 24th was the document.

5 Q. Okay. Were you confused that Alessi was trying to  
6 charge you \$7,021.28 as of November 18th and was it  
7 \$10,491.07 on November 20th?

8 A. Yes. And they're both on 1200 Broken Feather Court.

9 Q. What was your reaction when you received those two  
10 liens?

11 A. Shocked and helpless.

12 Q. Did you ever receive any explanation from Alessi as  
13 to why they recorded two liens in two different amounts  
14 within five days?

15 A. No. I've never received any explanation on any of  
16 the liens.

17 Q. As you sit here today, do you believe that as of  
18 November 20, 2008, \$10,491.07 was the accurate past due  
19 assessments and charges for 1200 Broken Feather Court?

20 A. No, not at all.

21 Q. What about with respect to -- I believe it's  
22 Exhibit -- what is it -- 29. Did you believe on  
23 November 18, 2008, that the accurate past due assessments  
24 and charges on that property were \$7,021.28?

25 A. No, that's not accurate.

1 Q. What did you do about it?

2 A. There's nothing you can do when they put a lien on  
3 your property, except my attorney -- to have an attorney.

4 Q. Okay. At what point in time did you list your  
5 property for sale? Did you ever try to sell either one of  
6 these properties?

7 A. Oh, yeah. The lot has been for sale since 2004, I  
8 think it is, 2004 or 2005. The lot.

9 And then I also had the house up for sale. The  
10 lot's still for sale. Well, it was up for sale all the way  
11 up to six months ago.

12 Q. Has it been listed on the MLS?

13 A. Yes, all the way since 2005 -- '4 or '5. I think  
14 '5, 2005 --

15 Q. Okay.

16 A. -- started.

17 Q. All right. With respect to the house, what have  
18 been your activities in putting that up for sale?

19 A. It's now not up for sale. But it was up for sale  
20 for a period of time.

21 Q. What period was that, approximately?

22 A. 2000 -- well, the house was 2005 to, let's see,  
23 about, I think, 2008. Approximately. But the lot has been  
24 the whole time.

25 Q. And the house was listed on the MLS as well?

1 A. Yes.

2 Q. Who was your Realtor with respect to that  
3 transaction or attempt to sell the house?

4 A. I've had a couple. David Reed was one of the  
5 Realtors. And then -- I can't think of his name right now.  
6 I just went blank. I can't think of the Realtor at the  
7 moment.

8 Well, it's been -- it will come to me. I'm  
9 sorry. I apologize. I just went blank. Clay Alder.

10 Q. And that's with respect to the house?

11 A. Clay Alder has had the lot and the house. And then  
12 I had a couple Realtors on the house. I can't remember  
13 their names right now.

14 Q. Well, if it comes to you --

15 A. I'd have to look it up.

16 Q. If it comes to you, let me know.

17 A. Okay.

18 Q. Did you receive any offers on the house during that  
19 timeframe?

20 A. Yes, I did.

21 Q. What kind of offers did you get?

22 A. I had one was -- back then it was 1,100,000.

23 Q. That was in 2005, right?

24 A. Yes.

25 Q. I think we have documentation of that produced in

1 our files. So we might be able to talk about that.

2 But the liens weren't on your property until  
3 2007, right, June of 2007?

4 A. Right.

5 Q. What happened in that 2005 transaction that it  
6 didn't go through?

7 A. I had -- that was when the homes were very high. So  
8 it was actually at a million two something, a million two  
9 thousand, so it was a hundred thousand dollar low offer  
10 back then.

11 Q. Okay.

12 A. And so I didn't take that offer in 2005.

13 Q. Okay. Buyer -- seller's remorse?

14 A. Now, it is.

15 Q. With respect then to any offers that you've had  
16 since the lien was placed on the property, what kind of  
17 action or interest have you seen since June 1 of 2007?

18 A. On the house or the lot?

19 Q. On the house?

20 A. No, I took it off the market. Once all these liens  
21 went on the property, I was not going to sell it for all  
22 these liens that I don't owe, and so I took it -- I took it  
23 off the market. It was on for a couple years, but I took  
24 it off.

25 Q. Okay. And you said --

1 A. Until this gets -- got settled. I thought it would  
2 be settled a long time ago.

3 Q. Sure. Approximately what time did you take it off  
4 the market? What date?

5 A. Oh, gosh. '8, '9 -- '9. Maybe 2009. '10. I would  
6 have to look it up. I'm sorry. I didn't know you were  
7 going to ask this.

8 Q. That's all right. This lawsuit was filed when,  
9 July of 2009?

10 A. Yeah. Oh, the lawsuit?

11 Q. Yes, this lawsuit.

12 A. Oh, no --

13 Q. The reason we're all in the room today.

14 A. No, November of 2008.

15 Q. I think it's 2009. It might have started in  
16 something else in 2008.

17 A. Yeah. No, it was 2008.

18 Q. Okay.

19 A. I think. As I recall.

20 Q. All right. During the pendency of the lawsuit, have  
21 you made any attempt to sell the house?

22 A. Yes, during this lawsuit, yes.

23 Q. What have you done?

24 A. I had it listed in the MLS.

25 Q. Okay. And have you had any offers on the home

1 during the pendency of this lawsuit?

2 A. No, I have not.

3 Q. Do you have -- strike that.

4 All right. Let's go ahead and go back and do a  
5 little more digging here.

6 Let's look at, let's see, Exhibit 31.

7 Mr. Richards got me back on track.

8 With respect to -- I'm sorry. You can take that  
9 down, Mr. Blackburn.

10 With respect to making payments on the property,  
11 when did you resume making monthly assessment payments?

12 A. After the -- let's see. Let me think. After the --  
13 well, after the lawsuit was in the court, and so then it  
14 was safe, so then I started making my payments because  
15 they're all documented at that point.

16 So I would say there was a year that I did not  
17 make the payments. So 2009?

18 Q. Okay. So in 2009 you started making payments --

19 A. Yes.

20 Q. -- again?

21 A. Regularly.

22 Q. And when we say payments, what exactly are you doing  
23 with respect to this property?

24 A. Make my payments every month.

25 Q. To who?

1       A.       Two payments every month on one check, but I  
2 document it on the check.

3       Q.       I'd like to look up, let's see, Exhibit 21, please.  
4 And Exhibit 21 is a very large number of pages.

5               Are you familiar with Exhibit 21, the big stack  
6 of checks and receipts?

7       A.       Yes, those are the --

8       Q.       Are those the payments that you made?

9       A.       Yeah. Those are the coupons that come with your  
10 payments to show each lot, the house and the lot, and then  
11 the amount that I made.

12              MR. BOURASSA: Your Honor, we would move the  
13 entirety of Exhibit 21 into evidence.

14              THE COURT: When you say the entirety, what are  
15 you referring to?

16              MR. BOURASSA: It's approximately 50 pages. Oh,  
17 82 pages. 82 pages of checks and receipts for HOA payments  
18 made after January of 2009.

19              THE COURT: Any objection?

20              MR. BAYARD: That's a lot of exhibit, Your  
21 Honor, to look at. Can we please have one second?

22              Your Honor, I have an objection. Some of the  
23 documents are actual copies of checks. For some checks  
24 there's a copy of the front and a copy of the back,  
25 indicating it was negotiated.



1                   There are handwritten pages in here. It's not  
2 clear who wrote those.

3                   And so I don't think we can stipulate to the  
4 admissibility of the entire exhibit.

5                   THE COURT: I'll give you a moment to indicate  
6 which ones you can stipulate to so that maybe we can  
7 shorten this process.

8                   MR. BAYARD: Your Honor, we can stipulate to the  
9 first page of Exhibit 21, which is a check dated January  
10 23rd, 2009, check number 2243, in the amount of \$415.

11                   On page 2 of Exhibit 21, there are copies of  
12 apparently unrelated checks. But it looks like the last  
13 check is a duplicate of check number 2243, that was also on  
14 the first page.

15                   MR. BOURASSA: If it would save time for the  
16 Court's staff and so forth, we're happy to just hold this  
17 aside for the time being to allow counsel to go through and  
18 pick out any pages he's uncomfortable with for separate  
19 address.

20                   THE COURT: Let's do that. What I'll ask that  
21 you do is, Counsel, to review the exhibit at the conclusion  
22 of the day and see what you can agree upon, and advise the  
23 Court what you haven't agreed upon, and we'll deal with  
24 that as necessary.

25                   MR. BOURASSA: Understood, Your Honor. It's our

1 intention to produce a demonstrative exhibit that just has  
2 a spreadsheet of the charge, the payment, and just going  
3 from that date forward to really make it a lot easier for  
4 the jury to not have to deal with 83 pages of checks.

5 THE COURT: Okay. Well, as you know, you've got  
6 to have the exhibits in first.

7 MR. BOURASSA: Of course. Of course.

8 THE COURT: So we'll do first things first and  
9 take it from there.

10 MR. BOURASSA: Absolutely, Your Honor.

11 BY MR. BOURASSA:

12 Q. All right. Let's go ahead and turn to Exhibit 36.

13 Do you recognize that document?

14 A. Yes.

15 Q. What is it?

16 A. Can you go up to the top again a second -- just a  
17 minute? It's a -- yeah, it's another collection. Let's  
18 see. Wait a minute. If you could scoot --

19 Q. All right.

20 A. Can you condense it?

21 Q. It's another collection letter from Alessi?

22 A. Yes.

23 Q. Okay.

24 MR. BOURASSA: We would move that into evidence  
25 as the next exhibit in order, 36.

1 MR. BAYARD: Your Honor, my Exhibit 36 is  
2 addressed to me. I'm not sure what's going on.

3 THE COURT: This one is too.

4 MR. BOURASSA: It is, Your Honor. But it's a  
5 record of the demand letter at that point in time. And I  
6 don't know what counsel's production was to us, but --

7 MR. BAYARD: I would note, Your Honor, that  
8 nowhere on this exhibit does it reference plaintiff,  
9 plaintiff's address. There's nothing on this document that  
10 indicates it was ever received by her other than as a  
11 statement of account produced through discovery.

12 THE COURT: I'll allow you to go back over it,  
13 if you would like, Mr. Bourassa, to see if your client can  
14 verify it.

15 But at this point in time I don't think it's  
16 admissible.

17 MR. BOURASSA: Sure.

18 BY MR. BOURASSA:

19 Q. All right. Let's go ahead and look at Exhibit 38.

20 Do you recognize this document?

21 A. Yes. It's another lien on my property.

22 MR. BOURASSA: Go ahead and move that into  
23 evidence, Exhibit 38.

24 MR. BAYARD: No objection, Your Honor.

25 THE COURT: It's admitted.

1 (Plaintiff's Exhibit 38 received into  
2 evidence.)

3 BY MR. BOURASSA:

4 Q. All right. Let's scroll down to the bottom and see  
5 what the date on this document is.

6 A. December 4, 2012.

7 Q. Okay. As of December 4th, 2012, based on your prior  
8 testimony, you had been making regular payments, I'm not  
9 saying you were perfect every month, but had been keeping  
10 up with your assessments since January of 2009; is that  
11 right?

12 A. Yes. Every single month I've made my payments all  
13 the way to now.

14 Q. Okay. And like I said, you might have missed a  
15 month but then made it up the next month or something like  
16 that?

17 MR. BAYARD: Objection. Leading.

18 THE COURT: Sustained.

19 THE WITNESS: I made them every single month.  
20 If there was -- I think there was one month that I was late  
21 and then I made two in a month. But, otherwise, I've made  
22 every single month on a monthly basis.

23 BY MR. BOURASSA:

24 Q. Understood. All right. So with respect to Exhibit  
25 38, can you tell me what address that applies to? It's the

1 second paragraph down at the bottom.

2 A. 1200 Broken Feather Court, the -- my home.

3 Q. All right.

4 JUROR: We don't have it.

5 MR. BOURASSA: Oh, I'm sorry. Move that into  
6 evidence, I believe.

7 MR. BAYARD: I thought we already did, but  
8 there's --

9 THE COURT: I think it's in.

10 MR. BOURASSA: Yes. All right. As long as the  
11 jury has it --

12 JUROR: It's not showing.

13 MR. BOURASSA: All right.

14 (Discussion held off the record.)

15 THE COURT: Computer age, ladies and gentlemen.  
16 We all deal with it. Let's move along as best we can.

17 MR. BOURASSA: As fortune would have it, Your  
18 Honor, of course, this is the biggest of the liens.

19 (Discussion held off the record.)

20 BY MR. BOURASSA:

21 Q. All right. I'm sorry. Did we get the date of this  
22 in, December 4 --

23 COURTROOM ADMINISTRATOR: Hold on one second.  
24 Let me just try something.

25 MR. BOURASSA: It's on the big screen. That's

1 sufficient.

2 BY MR. BOURASSA:

3 Q. As I recall, this was, what, December 4th, 2012,  
4 down at the bottom; is that right?

5 A. Let's see. Yeah. December 4th, 2012.

6 Q. And I think we just said it applies to your home.

7 A. My home only.

8 Q. Can you tell me what the lien is on this  
9 particular -- or the amount due as alleged on this  
10 particular lien?

11 A. \$32,510.96.

12 Q. And so do you have any understanding of how you went  
13 from 2009, when you had started making all of your  
14 payments, to a \$32,000 balance allegedly due and owing?

15 A. No. Because as of January 23rd, every single  
16 payment's been made. So I'm not late on any payments from  
17 2009 all the way to today. And there was just the 2007,  
18 '08 that I was behind.

19 So why are they -- keep adding --

20 Q. Is it your -- is it your belief that with respect to  
21 the amount of \$32,510.96, is that an accurate amount due  
22 and owing at the time this was, December 4th, 2012?

23 A. Absolutely not. No. I've made every payment. I  
24 don't know how it keeps increasing and they keep adding  
25 more liens.

1 Q. All right. Let's go to Exhibit 40, please.

2 Do you recognize that document?

3 A. Yeah, 2013, yeah.

4 Q. What is it?

5 A. It's another lien.

6 MR. BOURASSA: Okay. Move that into evidence,  
7 Your Honor.

8 THE WITNESS: On 1200 Broken Feather Court.

9 MR. BOURASSA: We would move that into evidence,  
10 Your Honor, as 40.

11 MR. BAYARD: No objection, Your Honor.

12 THE COURT: All right. It's admitted.

13 (Plaintiff's Exhibit 40 received into  
14 evidence.)

15 MR. BOURASSA: Thank you, Judge.

16 BY MR. BOURASSA:

17 Q. Scroll down to the bottom, and we can see the date  
18 on this document is March 18, 2013?

19 A. Correct. Yes.

20 Q. And this property address also is the 1200 Broken  
21 Feather house, right?

22 A. Yes, 1200 Broken Feather.

23 Q. And what's the amount that's due on this lien?

24 A. I can't see the amount. \$9,236.64.

25 Q. Do you have any idea as to whether that was an

1 accurate amount as of March 18, 2013, for any past due  
2 assessments, charges, anything else related to 1200 Broken  
3 Feather Court?

4 A. No. This isn't just another lien added to all the  
5 other, the 32,000 and all the other liens.

6 Q. Looking back at the Exhibit 38, the \$32,000 lien,  
7 and -- I'm just wondering, did you pay \$23,000 to Alessi or  
8 to ArrowCreek in between these two liens?

9 A. No, absolutely not.

10 Q. Did you make your regular HOA payments?

11 A. Yes, every single month.

12 Q. Do you have any understanding as to what the \$23,000  
13 difference is between the two liens?

14 A. No. I'm completely confused.

15 Q. What did you do when you received this lien?

16 A. Well, I wasn't as bad as the \$32,000 lien, but,  
17 yeah, I just -- I'm just flabbergasted. I'm -- I don't --  
18 I have -- I don't know what to say.

19 I was shocked. I'm totally shocked. I don't  
20 know why I keep getting liened more and more as I make the  
21 payments every month. Because we're only talking about '7  
22 and '8 is when I was behind on the payments.

23 Q. All right. And then let's turn to Exhibit 42,  
24 please.

25 Do you recognize that document?



1       A.       Can you make it a little bigger for the date,  
2 please? Is that August? Yeah, yeah, August -- okay.  
3 Yeah, August 20th. Okay.

4               So that's another lien.

5       Q.       Okay.

6       A.       And that's now on my -- my -- it's raw land is  
7 the -- 5835 Flowering Sage is my property that's  
8 undeveloped up in ArrowCreek.

9       Q.       Okay. That's the 5835 Flowering Sage. I'm sorry.  
10 I have two documents stuck in my Exhibit 42. That's  
11 because I have no documents stuck in my Exhibit 41.

12              All right. Go to Exhibit 41. I'm sorry.

13              All right. With respect to Exhibit 41, do you  
14 recognize that document?

15       A.       Okay. Okay. So this is 1200 -- okay. This is my  
16 house, 1200 Broken Feather Court, July of 2013.

17       Q.       All right. And so the same thing, this is June 28,  
18 2013, is the signature time -- or signature date.

19       A.       Yeah, 6/28/13.

20       Q.       Okay.

21       A.       But it was recorded, I guess, 7/1/2013.

22              MR. BOURASSA: Your Honor, we would move Exhibit  
23 41 into evidence.

24              MR. BAYARD: No objection, Your Honor.

25              THE COURT: It's admitted.

1 (Plaintiff's Exhibit 41 received into  
2 evidence.)

3 BY MR. BOURASSA:

4 Q. All right. So we were talking about Exhibit 40.  
5 Actually, we were talking about -- let me just get the  
6 chronology here. We were talking about Exhibit 38, which  
7 is a \$32,000 lien.

8 Did you receive anything from Alessi or  
9 ArrowCreek regarding any reason to reduce their \$32,000  
10 lien prior to them sending you the March 18, 2013, lien for  
11 \$9,236?

12 A. No, nothing.

13 Q. All right. And that would be Exhibit 40 that we  
14 talked about.

15 Now we're looking at Exhibit 41. And what's the  
16 amount due on Exhibit 41?

17 A. Okay. That's 8,025 -- 8,025.23.

18 Q. Okay. Could we put 41 and 40 side by side. And the  
19 amount due on Exhibit 40 was the \$9,236.64, correct?

20 A. Correct. Yes.

21 Q. And the amount due on Exhibit 41, three months  
22 later, is \$8,025.23?

23 A. Correct.

24 Q. Do you have any understanding of why that number  
25 changed?

1       A.       Absolutely do not.

2       Q.       All right. So, so far as I can see, that's the last  
3       lien that was put on the Broken Feather property.

4               MR. BAYARD: Objection. Leading.

5       BY MR. BOURASSA:

6       Q.       Do you have any understanding of any additional  
7       liens since them?

8               I'm sorry. I'm finishing my question.

9               THE COURT: I'll allow the question in light of  
10       the part that followed the objection.

11              THE WITNESS: No, I think July 2013 is the last  
12       time they added more liens. The last lien that I know  
13       they've added to it, to the property.

14              MR. BOURASSA: Okay.

15       BY MR. BOURASSA:

16       Q.       Do you have an understanding as to whether as of  
17       July 2013, the \$8,025.23 number was accurate with respect  
18       to what you owe the association?

19       A.       No, I do not.

20       Q.       All right. Well, that takes care of one property  
21       with respect to the liens. And now we're going to move on  
22       to the Flowering Sage property. And I'll try to move  
23       through it just a little bit quicker because I know this is  
24       really not exciting.

25              All right. Let's go ahead and look at Exhibit

1 No. 8, please.

2 Do you recognize that document?

3 A. Yeah. Can you make the date a little bigger,  
4 please? Yeah. So that was -- yeah, June 14. That's the  
5 first lien on -- I think this would be the lot.

6 Q. This is the Flowering Sage property, right?

7 A. Yes, the Flowering Sage, yes.

8 Q. Again, Flowering Sage, is it vacant?

9 A. Yeah. It's a -- it's ready to be built on it. I  
10 mean, it has sewer, water, it's ready to go, to be built on  
11 in ArrowCreek.

12 Q. Okay.

13 MR. BOURASSA: We'll move that document into  
14 evidence. That's Exhibit 8, please.

15 MR. BAYARD: Your Honor, Exhibit 8 appears to be  
16 two separate documents. We have no objection to page 1 of  
17 the exhibit being admitted.

18 MR. BOURASSA: How about we take out page 2?

19 MR. BAYARD: That will work.

20 THE COURT: All right. It's admitted.

21 (Plaintiff's Exhibit 8, page 1 received into  
22 evidence.)

23 BY MR. BOURASSA:

24 Q. With respect to Exhibit 8, could you tell us the  
25 amount that Alessi Trustee Corporation is alleged is due

1 and owing at that point in time?

2 A. Yes, \$2,737.25.

3 Q. Okay. Now, is this the same timeframe that we're  
4 talking about in 2007 with Flowering Sage property as we  
5 were with the Broken Feather property, your financial  
6 condition, of course, is the same?

7 A. Yeah. I was equally behind, because I make both lot  
8 payments. So, I mean, I got behind in 2007, tried to get  
9 current in 2008, but my attorney said to stop making any  
10 further payments until the money that I was applying went  
11 to ArrowCreek.

12 And so then I start -- January 23rd was my very  
13 first -- January '09 was my first payment. So that was the  
14 two years we're talking about right there.

15 Q. So it would correspond to both lots? If you missed  
16 a payment on one lot, you would have missed a payment on  
17 the other lot?

18 A. Yes. I always made the two together. You get your  
19 coupon stubs, you know, for the lot and the house. I  
20 always made them together, at the same time, on one check  
21 and would say two lots.

22 Q. Okay. What's your understanding of how many months  
23 behind you were on the Flowering Sage property as of June  
24 of 2007?

25 A. I was the exact same amount behind as the home.

1 Q. Do you have an understanding of why the lien number  
2 differs from the Flowering Sage property to --

3 A. They would many times, even though I would send the  
4 separate stubs in saying that lot -- ArrowCreek lot and the  
5 house, and I would put on the check two lots, and then I  
6 would even put the number -- I always put the numbers on  
7 the check, lot -- this lot 210 and lot -- I forget what the  
8 other one was.

9 But they would still sometimes take it and put  
10 it all to one or all to the other. And so their accounting  
11 was always off.

12 Q. Do you have an --

13 A. It seemed like.

14 Q. -- understanding as to whether --

15 A. Numerous.

16 Q. -- \$2,737.25 was an accurate accounting of the past  
17 due balance on Flowering Sage as of June 1, 2007?

18 A. No, I don't know if that's accurate.

19 Q. Do you dispute that number?

20 A. Yes.

21 Q. All right. Let's look at Exhibit No. 6.

22 Do you recognize that document?

23 A. February 6, 2008. And this is for the lot.

24 Q. Do you recognize it?

25 A. Yes.

1                   MR. BOURASSA: We would move Exhibit 6 into  
2 evidence, Your Honor.

3                   THE COURT: Any objection, Mr. Bayard?

4                   MR. BAYARD: Yes, Your Honor. The object- -- or  
5 this document appears to have been modified.

6                   There is a line through the first sentence in  
7 paragraph 4 with a handwritten notation. It doesn't  
8 reflect how the document would have been recorded. It  
9 looks like this document has been altered for some reason.

10                  THE COURT: All right.

11                  Mr. Bourassa, can you --

12                  MR. BOURASSA: Certainly, Your Honor. I would  
13 advise the Court that in a number of the lien documents  
14 reflecting Flowering Sage Trail, the -- whether it's auto  
15 correct or something suggests, perhaps as a premonition of  
16 what's going to happen, Flowering Sage trial, which has  
17 been corrected, we don't know by who on this particular  
18 document, but is uncorrected on a number of other  
19 documents.

20                  This is what Alessi has produced to us, not  
21 something that we produced, Your Honor.

22                  THE COURT: Okay. Are the differences on the  
23 changed documents between trail and trial the same  
24 throughout? Is that the same type of correction that would  
25 appear to have been made?

1 MR. BOURASSA: It is my recollection, Your  
2 Honor, that this is the only sheet that has the line out  
3 and the typewritten -- or, excuse me, the handwritten trail  
4 in place of the word trial.

5 THE COURT: All right. I'll admit it with the  
6 instruction to the jury to draw no inferences over the  
7 deletion that appears to be handwritten and the word trail  
8 is in there. The balance of the document appears properly  
9 admissible. And the jury should draw no inference from the  
10 one interlineation one way or the other.

11 MR. BOURASSA: Thank you, Your Honor.

12 BY MR. BOURASSA:

13 Q. Could you see the date on this particular document  
14 at the signature line?

15 A. Yes, February 3rd, 2008.

16 Q. And is it your understanding that this particular  
17 lien applies to the Flowering Sage property?

18 A. Yes.

19 Q. And what's the amount alleged to be due on this  
20 particular lien?

21 A. \$6,405.93.

22 Q. Do you have any understanding as to where the  
23 additional 55-, \$5600 -- excuse me, strike that, the 35- or  
24 \$3600 difference between this document and Exhibit 8 that  
25 we just looked at, where that difference --



1                   MR. BAYARD: Objection, Your Honor. Counsel's  
2                   testifying as to the mathematics. I haven't had a chance  
3                   to do the --

4                   THE COURT: To check the math? I'll allow the  
5                   question and caution Mr. Bourassa to try and clarify --  
6                   well, rephrase the question, Mr. Bourassa.

7                   MR. BOURASSA: Sure, Your Honor.

8                   THE COURT: That would be the better way to do  
9                   it.

10                  MR. BOURASSA: Sure.

11                  BY MR. BOURASSA:

12                  Q.       You recall Exhibit 8 was seeking approximately  
13                  \$2,737.25 from you, correct?

14                  A.       Yes.

15                  Q.       And this particular document is seeking \$6,405.93  
16                  from you. Do you know what the difference is or why  
17                  there's a difference there?

18                  A.       No, I do not.

19                  Q.       Do you have any understanding of where the  
20                  additional charges came from beyond just your regular  
21                  assessments for this property?

22                  A.       No, I do not. I have no idea.

23                  Q.       That saves me from doing math anyway.

24                               So that's already admitted into evidence. Let's  
25                  go to the next one, which is Exhibit 3.

1 MR. BOURASSA: Ms. Clerk, has Exhibit 3 been  
2 admitted previously?

3 COURTROOM ADMINISTRATOR: No, it has not.

4 BY MR. BOURASSA:

5 Q. Do you recognize this document?

6 A. Yeah. Notice of Trustee's Sale. Yes, I do.

7 MR. BOURASSA: We would move Exhibit 3 into  
8 evidence, Your Honor.

9 THE COURT: Mr. Bayard?

10 MR. BAYARD: Your Honor, there are three  
11 different pages in Exhibit 3. I'm just trying to compare  
12 them to see if they're duplicates.

13 MR. BOURASSA: I think I just want the first  
14 page, Your Honor. I'll take out the other two.

15 MR. BAYARD: No objection to the first page,  
16 Your Honor.

17 THE COURT: All right. It's admitted.

18 (Plaintiff's Exhibit 3, page 1 received into  
19 evidence.)

20 MR. BOURASSA: Thank you, Your Honor.

21 Just as a point of clarification when we look at  
22 the address on this particular page, the Flowering Trail,  
23 Flowering Sage Trail, just note for the Court that there  
24 is the misspelling of trail as trial that we referenced  
25 earlier.

1 BY MR. BOURASSA:

2 Q. All right. You can see the date on your screen,  
3 April 30, 2008. And do you have an understanding as to --  
4 I'm sorry. How much are they asking for?

5 A. Excuse me. Their screen is blank. Is it supposed  
6 to be?

7 MR. BOURASSA: We moved that into evidence, I  
8 think.

9 THE WITNESS: Oh, there you go. Now it's not.

10 MR. BOURASSA: Thank you so much.

11 THE WITNESS: Okay.

12 THE COURT: Well --

13 THE WITNESS: \$7,715.93.

14 BY MR. BOURASSA:

15 Q. And the date on that document is April 30, 2008; is  
16 that correct?

17 A. Correct.

18 Q. Do you have an understanding of the additional  
19 charges in this particular lien since the February 3rd lien  
20 of 6,405.93?

21 A. No, I do not.

22 Q. Now, this is still before you've gotten an attorney,  
23 right?

24 A. Let me see. What's the date again?

25 Q. April 30, 2000 --

1 A. April 30th --

2 Q. -- 8.

3 A. Let me think. Just a minute. Correct. Because  
4 it's May 30th -- May 28th is when the sale of my house was.  
5 So this is before I had an attorney, correct.

6 Q. Okay. Did you contact Alessi with respect to this  
7 notice?

8 A. No. Well, I sent letters, yes. I'm sorry. I have  
9 numerous letters I sent to them asking for urgent  
10 explanation, What are these charges and what are they for?

11 Q. Okay. Did you receive a response?

12 A. No, I never did.

13 Q. All right. Let's look at Exhibit 27.

14 Do you recognize that document?

15 A. Yes. It's another lien.

16 MR. BOURASSA: Move Exhibit 27 into evidence,  
17 Your Honor.

18 MR. BAYARD: No objection, Your Honor.

19 THE COURT: It's admitted.

20 (Plaintiff's Exhibit 27 received into  
21 evidence.)

22 BY MR. BOURASSA:

23 Q. And this is another lien on the Flowering Sage  
24 property; is that right?

25 A. Yes, it is.

1 Q. And what's the date on this particular lien?

2 A. November 17th, 2008.

3 Q. And what's the amount that's due and owing alleged  
4 on this particular document?

5 A. \$7,715.93.

6 Q. Isn't that exactly the same amount that was liened  
7 on the property on April 30, 2008, in Exhibit 3?

8 A. I'd have to see that document.

9 Q. Let's put Exhibit 3 up next to Exhibit 27, please.

10 So are those two numbers the same, the number  
11 for Exhibit 3, \$7,715.93 at the bottom?

12 A. Yeah, I see it on that one. Now, let me see it on  
13 the other one.

14 Oh, yes, it is, \$7,715.93. Same amount.

15 Q. Now, you hadn't made -- you're still in the  
16 not-making-payment-stage there, weren't you? Oh, no, you'd  
17 made the -- you'd made a payment. You were on the payment  
18 plan. What was going on?

19 A. I made the May and June payment. So I made the May  
20 and June of --

21 Q. Payments on the payment plan?

22 A. Right.

23 Q. Right.

24 MR. BAYARD: Objection, Your Honor. The only  
25 evidence of a payment plan is in relation to the home.

1 There's no evidence that there was a payment plan on the  
2 vacant lot.

3 THE COURT: Overruled. That's a subject for  
4 cross-examination.

5 BY MR. BOURASSA:

6 Q. But basically the point, though, here, Ms. Ellis, if  
7 you were making payments on this property, you would have  
8 expected that number to have gone down, right?

9 A. Correct.

10 Q. And if you weren't making payments it would have  
11 gone up?

12 A. Correct.

13 Q. And it's the same. Do you have any explanation for  
14 that?

15 A. No, I don't.

16 Q. Okay. Did you -- I guess at this point in time you  
17 already had the attorney in November 17, 2008, right?

18 A. Yes.

19 Q. Okay. Again, this is -- the date we're dealing with  
20 on Exhibit 27 is November 17, 2008.

21 Let's look at Exhibit 26. Do you recognize that  
22 document?

23 A. Yes, I do.

24 Q. What is it?

25 A. Notice of Trustee's Sale. Can I see the top? Is

1       there a -- yeah. So it's another lien.

2       Q.       Okay. And this is on the Flowering Sage Trail  
3       property?

4       A.       Yes.

5       Q.       And the date on this down at the bottom is  
6       November 20, 2008, correct?

7       A.       Correct.

8       Q.       And how much are they asking for in this particular  
9       document?

10      A.       \$14,478.41.

11      Q.       Okay. Well, let's put this side by side with  
12      Exhibit 27.

13                   Oh, I'm sorry. We need to admit that. I forgot  
14      to move the Court to admit Exhibit 26 as an exhibit.

15                   THE COURT: Mr. Bayard?

16                   MR. BAYARD: No objection, Your Honor.

17                   THE COURT: It's admitted.

18                   (Plaintiff's Exhibit 26 received into  
19      evidence.)

20      BY MR. BOURASSA:

21      Q.       So we've got Exhibit 26 next to Exhibit 27.

22                   You can see in Exhibit 27 the amount due and the  
23      date of 11/17/2008, correct?

24      A.       Right.

25      Q.       And then look at Exhibit 28.

1                   Now, both of these documents -- on Exhibit 28 is  
2 \$14,478.41. Do you have any understanding why in three  
3 days difference you incurred an additional -- and I'm not  
4 going to say the amount, a lot more money in charges?

5       A.     No, I don't. Absolutely I have no -- they never  
6 sent any documentation on any of this.

7       Q.     Okay. And these are both recorded documents,  
8 correct?

9       A.     Yes. They all are.

10      Q.     And you can tell that how?

11      A.     Because the document numbers up on the right-hand  
12 corner. And they're all on my lot and my house, all of  
13 them still.

14      Q.     So that's the recorder's stamp?

15      A.     Correct.

16      Q.     Have you ever been to the recorder's office?

17      A.     Yes, I have.

18      Q.     What did you do there?

19      A.     Looked to see how many more liens I'm getting on my  
20 lot.

21      Q.     On the lot as well as the house?

22      A.     And the house, yeah.

23      Q.     How many times have you been to the recorder's  
24 office?

25      A.     I haven't been for a year now. But I used to go



1 every couple months --

2 Q. Why is that?

3 A. -- to check to see what's going on.

4 Q. Why is that?

5 A. Because a lot of these I was never notified. They  
6 never mailed it, didn't send anything to me certified,  
7 nothing. They just appeared when I went down there and I  
8 looked on them on the recorder's.

9 Q. All right. Back on Exhibit 26, do you see the total  
10 of the total amount, the 500 -- or, excuse me, \$5,685 and  
11 the additional \$50. Do you have any understanding of what  
12 that amount is supposed to represent?

13 A. Well, I guess collection and attorneys' fees.

14 Q. That's what it says. Do you know what they actually  
15 incurred or on what issues?

16 A. No. I have no documentation that shows. No  
17 breakdown of any of this.

18 Q. All right. Let's look at Exhibit 14, please.

19 Do you recognize that document?

20 A. Yes.

21 Q. How do you recognize that document?

22 A. Well, it's a lien.

23 Can you make it a little bit bigger? Yeah,  
24 thank you.

25 Q. What does it say at the top?

1 A. On 12/16/2008. It's document number 3712947. So  
2 it's another lien.

3 Q. That's what it says at the very top.

4 A. Oh, Release of Notice of Delinquent -- okay. So  
5 this is a -- they released a lien.

6 MR. BOURASSA: Hold on. Let's go ahead and move  
7 it into evidence, so the jury can see it, as 14.

8 MR. BAYARD: No objection, Your Honor.

9 THE COURT: It's admitted.

10 (Plaintiff's Exhibit 14 received into  
11 evidence.)

12 BY MR. BOURASSA:

13 Q. All right. So this relates, again, to the Flowering  
14 Sage Trail property, right?

15 A. Yes.

16 Q. Okay. And it's dated with a notary stamp December  
17 12, 2008, at the bottom?

18 A. Yes.

19 MR. BOURASSA: Mr. Blackburn, could you blow up  
20 the first paragraph of that.

21 BY MR. BOURASSA:

22 Q. So do you have an understanding as to what that  
23 means --

24 A. Yes.

25 Q. -- what this document means?

1       A.       Yes. They are -- yeah. Hold on a sec. The  
2 document 3544004 recorded back on June 14th, 2007, by  
3 Alessi Trustee Corporation, they are taking that lien off  
4 my property.

5       Q.       It doesn't just say taking it off, it says it's  
6 satisfied, right?

7       A.       Yeah, it does say that. It says satisfied and  
8 released.

9       Q.       Do you have an understanding why they would have  
10 released that lien?

11      A.       Yes.

12      Q.       And what is that?

13      A.       Because Alessi -- because back in June 14th, 2007,  
14 when they -- was the very first lien on my lot and the very  
15 first lien on my house, they were known as Alessi Trustee  
16 Corporation, and they were not licensed attorneys in Nevada  
17 or licensed collection agencies. So they had no right to  
18 lien anybody's property.

19               MR. BAYARD: Your Honor, objection. Move to  
20 strike her answer as inadmissible hearsay, speculation, no  
21 foundation.

22               THE COURT: Sustained.

23               Ladies and gentlemen, you should disregard  
24 Ms. Ellis's response to that last question.

25               Counsel, I'll allow you to pursue the subject

1 matter further, but the responses need to be to the  
2 question.

3 MR. BOURASSA: Understood, Your Honor.

4 Let's move on to Exhibit 2, please. My mistake.  
5 Let's go to 15, please. Oh, no, skip 15 as well. You guys  
6 got me confused. 36, 37.

7 Let's go to 32, please.

8 BY MR. BOURASSA:

9 Q. Do you recognize that document?

10 A. Yes.

11 Q. How do you recognize that document?

12 A. Well, they sent it to me for improper payment. They  
13 received my payment on March 20th --

14 Q. Hold on. Hold on.

15 A. Oh.

16 Q. Do you recognize it as a --

17 A. Yes.

18 Q. -- letter you received?

19 A. Oh, yes, I recognize it.

20 MR. BOURASSA: All right. Let's go ahead and  
21 move it into evidence as 32.

22 MR. BAYARD: No objection, Your Honor.

23 THE COURT: It's admitted.

24 (Plaintiff's Exhibit 32 received into  
25 evidence.)

1 BY MR. BOURASSA:

2 Q. All right. This letter is dated July 7, 2009, and  
3 it relates to the Flowering Sage Trail property, correct?

4 A. Correct.

5 Q. And could you explain to me then your understanding  
6 of this letter?

7 A. It's confusing. Our office -- can I read it?

8 Q. Sure.

9 A. Okay.

10 Our office has received your payment dated  
11 March 20th, 2009, in the amount of \$210.

12 And then we must -- and then it says:

13 We must therefore make a demand on the total  
14 current amount due of \$15,371.14. Payment must be  
15 in our office by July 22nd, 2009, and must be in  
16 the form of cashier's check.

17 Do you want me to read the whole thing?

18 Q. No. No. It's a demand for \$15,371.14, correct?

19 A. Yes.

20 Q. Did you believe at the time that you received this  
21 letter that that was an accurate accounting of the monies  
22 that you owed the association for Flowering Sage Trail?

23 A. No, that is not an accurate amount.

24 Q. Does that letter contain a statement that this is a  
25 communication from a debt collector?

1 A. No, it does not.

2 Q. Does it contain any statement that any information  
3 it obtained will be used for the purpose of collecting a  
4 debt?

5 A. No, it does not have that.

6 Q. All right. All right. Let's look at Exhibit 16,  
7 please.

8 Do you recognize that document?

9 A. Yes.

10 Q. What is it?

11 A. It's a demand for money.

12 Q. Okay.

13 A. For payment.

14 Q. Did you receive that letter?

15 A. Yes.

16 Q. All right.

17 MR. BOURASSA: Let's move 16 into evidence, Your  
18 Honor, please.

19 MR. BAYARD: No objection, Your Honor.

20 THE COURT: It's admitted.

21 (Plaintiff's Exhibit 16 received into  
22 evidence.)

23 BY MR. BOURASSA:

24 Q. Now, the date on this letter looks like it's  
25 July 28, 2009.

1 A. Correct.

2 Q. So that's, gosh, 21 days after the July 7, 2009,  
3 letter; is that right?

4 A. Yes.

5 Q. What's the amount that's demanded in this letter?  
6 I'm sorry. Strike that.

7 What's the amount demanded in 16? That is the  
8 July 28, 2009, letter.

9 A. \$15,871.14.

10 Q. Okay. And do you recall the July 7, 2009, letter  
11 requesting \$15,371.14?

12 A. Yes.

13 Q. Do you have an understanding as to what the  
14 additional charges were in that 21-day period, between the  
15 first letter and the second?

16 A. I do not.

17 Q. Also, I note that looking at Exhibit 16 it only  
18 shows as of July 28, 2009, payments received of \$210. Is  
19 that accurate?

20 A. No.

21 Q. Why is that not accurate?

22 A. Because as of January 2009 I made each payment  
23 every -- for my house and my lot, every single month all  
24 the way until now. So I don't know what the 210 --

25 Q. All right. Let's look at Exhibit 34.

1 Do you recognize that document?

2 A. Yes.

3 Q. Is it a letter you received?

4 A. Correct.

5 MR. BOURASSA: I'd move Exhibit 34 into  
6 evidence, Your Honor.

7 MR. BAYARD: One second, Your Honor.

8 No objection.

9 THE COURT: It's admitted.

10 (Plaintiff's Exhibit 34 received into  
11 evidence.)

12 MR. BOURASSA: Thank you.

13 BY MR. BOURASSA:

14 Q. The date on this letter is July 31, 2009; is that  
15 right?

16 A. Yes.

17 Q. Okay. And how much -- how much is Alessi asking for  
18 in this demand?

19 A. \$17,521.92.

20 Q. And that's on the Flowering Sage property as well?

21 A. Correct.

22 Q. Do you have an understanding as to why three days  
23 after their July 28, 2009, letter asking for \$15,871.14  
24 Alessi would send you another letter asking for \$17,521.92?

25 A. No, I do not.



1 Q. All right. Do you have an understanding as to the  
2 substantial difference over those three days?

3 A. I don't know what it's -- why.

4 Q. Do you believe that \$17,521.92 accurately reflected  
5 the amount due and owing on the Flowering Sage as of  
6 July 31, 2009?

7 A. No, it is not the accurate amount.

8 Q. Do you note at the bottom of Exhibit 34 -- do you  
9 see the bottom of Exhibit 34?

10 A. Now I do, yes.

11 Q. Do you note the bottom of Exhibit 34, do you notice  
12 that now there is a statement that Alessi is a debt  
13 collector --

14 A. Yes, there is.

15 Q. -- attempting to collect a debt and the information  
16 obtained will be for that purpose?

17 All right. Let's look at Exhibit 37, please.  
18 Do you recognize that document?

19 A. Yes.

20 Q. Is that a letter sent -- I'm sorry. Strike that.

21 MR. BOURASSA: Mr. Bayard, this looks like  
22 another letter to you.

23 MR. BAYARD: It does. Your Honor, I object to  
24 this document on the grounds that it doesn't appear it was  
25 ever sent to plaintiff.

1 MR. BOURASSA: Well, we will withdraw. I  
2 haven't even tried to admit it yet. So we'll just leave it  
3 where it is, my friend, and move along. How's that?

4 MR. BAYARD: Sounds like a plan.

5 BY MR. BOURASSA:

6 Q. All right. Let's look -- I apologize for that.  
7 Let's look at 42.

8 Do you recognize Exhibit 42?

9 A. Yes, I do.

10 Q. How do you recognize it?

11 A. That's another lien.

12 Q. Okay.

13 A. On the --

14 MR. BOURASSA: Your Honor, we move 42 into  
15 evidence, please.

16 MR. BAYARD: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (Plaintiff's Exhibit 42 received into  
19 evidence.)

20 BY MR. BOURASSA:

21 Q. What property does this relate to?

22 A. 1200 Broken Feather Court.

23 Q. I'm sorry. That's the mailing address. The  
24 property address is a little higher than that.

25 A. Oh. I can't see it on mine. Oh, there we go. I'm

1       sorry.   The Flowering Sage.   The lot.

2       Q.       Okay.   And what is the total amount asserted to be  
3       due on this particular document?

4       A.       \$14,441.10.

5       Q.       And what is the amount that represents the  
6       collection fees and interest fees?

7       A.       14,000 -- just a minute.   I'm sorry.   As of the  
8       total of this represents -- oh, \$1,392.14.

9       Q.       I'm sorry.   I want to understand that -- they're  
10       saying the total due is \$14,441.10, right?

11       A.       Oh, I see.   Oh, my God.   Okay.   Yes, 14,441.10 is  
12       the lien.   But of this total amount, \$14,385.20 represents  
13       attorneys' fees.

14               MR. BAYARD:   Objection, Your Honor.  
15       Mischaracterizing the document.   That's not what it says.

16               MR. BOURASSA:   Best evidence rule, Your Honor.  
17       It says what it says.

18               THE WITNESS:   I just can't see it when it gets  
19       big and small.

20               THE COURT:   Well, it's a misstatement of the  
21       exhibit.   But the amount that's set forth in the exhibit is  
22       admissible.

23               And the Court will let that stand at that as  
24       well as any other amounts that may appear in there.

25

1 BY MR. BOURASSA:

2 Q. So on its face this document says that you owe  
3 ArrowCreek Homeowners Association \$14,441.10. Is that  
4 accurate?

5 A. That's not accurate. But that's what it says on  
6 this.

7 Q. Okay. And do you have any understanding of how  
8 Alessi is then asserting that of the \$14,441.10 they've  
9 incurred \$14,385.20 in collection and/or attorneys' fees,  
10 assessments, interest, late fees, and service charges?

11 A. I don't have any -- I don't have any documentation  
12 to know where that numbers come from, for their attorneys'  
13 fees.

14 Q. And do you have any understanding of what \$1,392.14  
15 for collection costs is under any allocation whatsoever?

16 A. No, I do not.

17 Q. As you sit here, as of August 19, 2013, is this the  
18 last lien that was placed on the Flowering Sage Trail  
19 property?

20 A. Yes, I think so.

21 Q. Is it accurate in the slightest?

22 MR. BAYARD: Objection, Your Honor.

23 THE WITNESS: No, it's not.

24 MR. BAYARD: Leading, argumentative.

25 THE COURT: Sustained. The question and answer

1 will be stricken.

2 You may rephrase the question, Mr. Bourassa.

3 BY MR. BOURASSA:

4 Q. How much money do you think you owe on the Flowering  
5 Sage Trail property as of August 19, 2013?

6 A. August 19, 2014?

7 Q. 2013 is the date on this. Do you have any idea?

8 A. No.

9 Q. But you know it's not \$14,000, right?

10 A. Correct.

11 Q. All right.

12 MR. BOURASSA: Your Honor, do you want me to use  
13 the last four minutes? I can. Or if you'd like to -- this  
14 is an appropriate --

15 THE COURT: If this is a good time for a break  
16 in subject matter, let's go ahead and --

17 MR. BOURASSA: It is, Your Honor.

18 THE COURT: -- adjourn for the evening.

19 All right. Ladies and gentlemen, particularly  
20 when we're going through this kind of evidence, it's  
21 difficult for everyone to know, and so I think it's  
22 probably appropriate to go ahead and take our recess for  
23 the evening. But let me give you the admonition because  
24 this is very important.

25 I remind you that during our recess you are not

1 to discuss the case with anyone or permit anyone to discuss  
2 it with you or in your presence. You can talk to your  
3 fellow jurors about other things, but until the case is  
4 submitted to you and you retire to the jury room and  
5 deliberate and decide on a verdict, you're simply not to  
6 discuss the case or the evidence that's being presented in  
7 any way.

8 This caution includes not discussing it outside  
9 the courtroom, of course, not discussing it with family  
10 members or with anyone else or discussing it over the  
11 Internet in any way through either e-mails or text  
12 messaging.

13 Secondly, you're clearly not to read, watch, or  
14 listen to any report or commentary on the case by anyone or  
15 any medium of information. This certainly includes  
16 newspapers, television, radio, or Internet. Although I  
17 don't believe that any of them are following this.

18 Third, do not try to do any research or make any  
19 independent investigation on your own concerning this case.  
20 As I mentioned to you earlier, it's important that each one  
21 of you decide this case based purely on the evidence that's  
22 presented in the courtroom that you all have heard and  
23 seen. And anything else, of course, would be inadmissible  
24 and inappropriate to consider.

25 Finally, keep an open mind until you've heard

1 all the evidence, heard all the witnesses, received all the  
2 evidence that will be presented, and you've heard the final  
3 instructions by the Court and the final arguments by the  
4 attorneys.

5 If you have taken notes, and I've noticed that  
6 some of you have, please be careful to leave your notes in  
7 the jury deliberation room. They are protected there. No  
8 one else will have access to them. And they will be there  
9 for you when you return in the morning.

10 These admonitions continue throughout this  
11 trial, by the way, I should emphasize to you.

12 And I will tell you that we will start promptly  
13 at 8:30 in the morning. If you arrive a little early,  
14 we'll have some refreshments in the jury room for you, some  
15 donuts or other -- I'm not sure what they're getting for  
16 goodies these days. But there will be something there, I'm  
17 sure.

18 So at this time I thank you for your attention  
19 this afternoon. I appreciate it. As I mentioned, I know  
20 this kind of evidence can be challenging. I appreciate the  
21 very keen interest I've seen by the jury and all of the  
22 evidence that is being presented.

23 So we'll adjourn for this evening at this time.  
24 And you may go ahead and step down. Thank you.

25 COURTROOM ADMINISTRATOR: Please rise.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

(The proceedings adjourned at 4:57 p.m.)

\* \* \*



-o0o-

I certify that the foregoing is a correct  
transcript from the record of proceedings  
in the above-entitled matter.



2/17/15

Donna Davidson, RDR, CRR, CCR #318  
Official Reporter

Date

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

# I N D E X

PLAINTIFF'S WITNESSES:	PAGE
MELINDA ELLIS	
Direct Examination By Mr. Bourassa	65

# E X H I B I T S

PLAINTIFF'S	ADMITTED
3, page 1	138
4	102
5	83
8, page 1	132
9	86
10	94
12	90
14	146
16	150
25	112
26	143
27	140
29	110
32	148
34	152
38	124
40	127
41	130
42	154
56	97
57	98
58	100
59	106